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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,

v.  
DILIP NYALA,  
MICHAEL IRWIN

ID  
Nos. 131000034  
1309012464

Defendants.

BEFORE: HON. WILLIAM C. CARPENTER, JR., J.

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TRANSCRIPT OF OCME EVIDENTIARY HEARING

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July 9, 2014  
Courtroom No. 8B  
10:14 a.m.

JOSEPH GRUBB, ESQUIRE  
DEPARTMENT OF JUSTICE  
Wilmington, Delaware 19801  
for State of Delaware

PATRICK J. COLLINS, ESQUIRE  
ALBERT J. ROOP, V, ESQUIRE  
COLLINS & ROOP  
Wilmington, Delaware 19801  
for Defendants

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1 THE COURT: Good morning.

2 MR. COLLINS: Confirming if I didn't  
3 yesterday, we are prepared to go forward Thursday  
4 morning with Mr. Bono, the expert. So he has arranged  
5 to stay over an extra day to get done. That is the  
6 plan.

7 THE COURT: Okay.

8 MR. GRUBB: Good morning, Your Honor.

9 THE COURT: Anything before we start with  
10 Mr. Daneshgar again?

11 MR. GRUBB: I don't believe so. Mr. Collins  
12 and I, we spoke last night, spoke again this morning.  
13 I think I am hopeful that we are further streamlining  
14 things to where we should finish all of the testimony  
15 absent the defense expert from both State and defense  
16 today.

17 THE COURT: Okay. Is Mr. Daneshgar here?

18 MR. GRUBB: He is, Your Honor.

19 THE COURT: Come forward, sir, and take the  
20 stand.

21 (J Daneshgar retakes the witness stand.)

22 THE COURT: Have a seat, sir. Thank you.

23 DIRECT EXAMINATION

1 BY MR. GRUBB:

2 Q. Thank you, Your Honor. Mr. Daneshgar, good  
3 morning?

4 A. Good morning.

5 Q. We left off yesterday after you gave us a  
6 description of each area where drug evidence may be  
7 stored within the Office of the Chief Medical Examiner;  
8 is that accurate?

9 A. Yes.

10 Q. Recap, we ultimately had a couple different  
11 areas of the drug vault, correct?

12 A. Yes.

13 Q. You testified about the door leading to the  
14 drug vault, right?

15 A. Yes.

16 Q. So that is the FES office, so to speak?

17 A. Correct.

18 Q. You testified about the pass through, that  
19 separate locker where the chemists would put drugs when  
20 they are done testing them; is that correct?

21 A. Correct.

22 Q. General chemists lockers which there were  
23 roughly 12 contained within the lab, correct?

1 A. Yes.

2 Q. Specific extra chemist locker that would have  
3 key access to it only by the chemist, correct?

4 A. Yes.

5 Q. Did we miss any other areas where drugs may be  
6 stored within the Office of the Chief Medical Examiner?

7 A. No, you did not.

8 Q. Let's now turn to storage within the drug  
9 vault.

10 You testified yesterday that at times drug  
11 evidence would be put in the drug vault temporarily  
12 until you had a chance to get to it and log it into the  
13 FLIMS system; is that accurate?

14 A. Yes, it is.

15 Q. Was there a designated area within the drug  
16 vault that you would put those drugs awaiting to be  
17 processed and put into the FLIMS system?

18 A. Yes.

19 Q. Describe that for us, please?

20 A. Several bankers boxes labeled for cases to be  
21 logged in.

22 Q. Were they labeled in any certain way?

23 A. The boxes?

1 Q. Yes.

2 A. They had labels on them stating to be logged  
3 in so we knew these case had to be logged in.

4 Q. Were they just sort of thrown anywhere there  
5 was space in the drug vault, or was there a special  
6 area that you and other FES personnel would put those  
7 drugs yet to be logged in?

8 A. There was a designated shelf.

9 Q. Can you tell us a bit about that?

10 A. As soon as you entered that vault, it would be  
11 on the right-hand side, four separate shelves. One of  
12 the shelves was designated directly for cases to be  
13 logged in.

14 Q. See if we can't get a visual of that. I will  
15 put on the screen what has been admitted into evidence  
16 as State's Exhibit 23. Mr. Daneshgar, can you see that  
17 okay?

18 A. Yes, I can.

19 Q. Do we see the area you are referring to in  
20 this photograph?

21 A. Yes, you do.

22 Q. Please circle it, or mark it for us?

23 A. (Indicating).

1 Q. Okay.

2 If drugs, drug evidence was to be moved from  
3 one location to another, is it expected that that  
4 moment would be documented within the FLIMS chain of  
5 custody documents that we discussed yesterday?

6 A. Yes, it should be.

7 Q. Should it be done before or after the  
8 movement?

9 A. Before the move.

10 Q. Other than the initial login, which you  
11 testified to yesterday, would there be any reason that  
12 the login would be done after, as opposed to before  
13 from moving internally within OCME, from one locker to  
14 another?

15 A. No.

16 Q. I have to ask you, Mr. Daneshgar, since you  
17 work at the Medical Examiner's Office, a number of  
18 claims that we have all heard about. I will ask you to  
19 tell us whether or not you experienced these  
20 situations, okay?

21 A. Yes.

22 Q. We have heard that the door to the drug vault  
23 had been propped open at times. Have you ever

1 experienced that?

2 A. Yes, I have.

3 Q. Can you explain why the drug vault door would  
4 be propped open?

5 A. I would leave it open myself if I was entering  
6 into the vault and leaving within a couple seconds. I  
7 would escort several cases out so my hands would be  
8 full, I would not be able to open the door with a hand  
9 that was non use. I would have to push open the door  
10 using my body.

11 Q. While the drug vault door was propped open,  
12 would the door to get into the FES office be propped  
13 open, as well?

14 A. No, it would not be.

15 Q. So no one could get into the drug vault  
16 without going through the FES door, correct?

17 A. Correct.

18 Q. You testified briefly to this yesterday, but  
19 are you aware as to whether or not any systems were in  
20 place to monitor the comings and goings of OCME  
21 employees using their key fob or individual key codes?

22 A. Can you rephrase that?

23 Q. Sure.

1           Are you aware as to whether or not the  
2 building you work in monitors who would enter, for  
3 example, the drug vault at a given time?

4           A. I was told that it does. I can't exactly  
5 confirm that.

6           Q. You have no personal knowledge to that?

7           A. No.

8           Q. Were you the person in charge of tracking  
9 internal movement and key fob usage?

10          A. No, I was not.

11          Q. Would you still be required to use your key  
12 fob and/or key code to get into a specific area?

13          A. Yes, I would.

14          Q. We have heard there may or may not be cameras  
15 located in the FES office and the drug vault. Are you  
16 able to tell us whether or not any cameras were in  
17 there?

18          A. There is a camera in the drug vault itself.

19          Q. Which way is it facing, if you can tell us?

20          A. Towards the entry door.

21          Q. So the camera in the drug vault is facing the  
22 only entrance and exit that one would come in; is that  
23 accurate?

1           A. Correct. I believe the camera is in one of  
2 the pictures that you did show me.

3           Q. Once again, this is State's 23. Do we see it  
4 here?

5           A. Yes, you do.

6           Q. Circle it, please?

7           A. Absolutely. (Indicating).

8           Q. How familiar are you with this camera, how it  
9 records, how long it records, if it has a live feed,  
10 any of that?

11          A. None of it.

12          Q. You have any idea who would be?

13          A. I do not.

14          Q. We have heard that there were what was termed  
15 Y2K issues with OCME software, and tracking; are you  
16 aware of any Y2K issues?

17          A. Other than the report from the AG that was  
18 released; no, I do not.

19          Q. You have no personal knowledge, you cannot  
20 speak to that?

21          A. I cannot.

22          Q. We have heard about drug testing assignments  
23 that were made to the various chemists that work within

1 your building. Are you able to speak to how an  
2 assignment is made with a specific drug item to a  
3 specific chemist?

4 A. An e-mail is usually sent from the DOJ's  
5 office to a lab manager, or myself at times. We would  
6 have to assign a case. Depending on work load of a  
7 certain chemist, a case would be assigned to them.

8 Q. By whom?

9 A. Either myself or the lab manager. I did it  
10 temporarily for, approximately, a couple weeks until  
11 the new lab manager took it over.

12 Q. You made assignments to chemists?

13 A. I did at some point, yes.

14 Q. Lab manager Robin Quinn could make assignments  
15 to chemists, right?

16 A. Yes. That is correct.

17 Q. Were you working in the position you are in  
18 now when the previous manager, Caroline Honse was  
19 there?

20 A. Yes.

21 Q. Would she make assignments?

22 A. I believe she would, but I cannot confirm  
23 that.

1 Q. We heard of another FES that you testified to  
2 yesterday, Kelly Georgi, would she make assignments?

3 A. No, she would not.

4 Q. We heard of two individuals that performed FES  
5 duties, Aretha Bailey and Laura Nichols; would either  
6 of them make assignments to the chemists?

7 A. Aretha Bailey was doing it temporarily, but I  
8 am not sure for approximately how long.

9 Q. The assignment would take the form of what,  
10 e-mail, conversation, describe that for us, please?

11 A. Generally after we would assign the cases to  
12 the chemists, an e-mail would be sent out letting them  
13 know what cases have been assigned to them.

14 Q. You say after you would assign it, what do you  
15 mean?

16 A. You would have to manually go into FLIMS and  
17 under a drop down menu list an examiner for the case,  
18 then it would go into their case processing, I believe  
19 it is called, in FLIMS.

20 Q. Whoever did that, as we heard yesterday, it  
21 would have to be whoever logged in to make that  
22 assignment, that would show on the documentation,  
23 correct?

1 A. Can you rephrase that?

2 Q. Meaning whoever made the assignment in the  
3 FLIMS system would reflect that person because you  
4 would have to login to do it?

5 A. I am not sure if the assignment reflected who  
6 actually assigned the cases.

7 Q. It would reflect who logged in and put it into  
8 FLIMS, right?

9 A. Yes, it would.

10 Q. Would you then physically take the drugs from  
11 the drug vault to the personal chemist's locker?

12 A. No, I would not.

13 Q. Explain for us after the assignment is made, a  
14 chemist is designated you are going to test this, what  
15 is the process?

16 A. Generally a chemist would send myself, or  
17 other FES personnel an e-mail letting us know what  
18 cases he or she would like to work on for that day or  
19 the next couple days. After that point, we would pull  
20 evidence from the vault, transfer it to FLIMS, take it  
21 down to their general locker.

22 Q. We have heard that drug evidence would sit in  
23 the chemist's general locker for a period of time,

1 ranging from days to weeks, to maybe even months; are  
2 you aware of that?

3 A. Yes, I am.

4 Q. Is that common or uncommon?

5 A. It is common.

6 Q. Explain why?

7 A. I guess because it's -- some of the cases that  
8 they want to work on eventually do plea out, or  
9 sometime something happens that testing is eventually  
10 cancelled. So cases have been known to sit in the  
11 locker for an extended period of time before they bring  
12 them all down to the pass through at once.

13 Q. Are multiple assignments made to a specific  
14 chemist at a given time?

15 A. Yes, they are.

16 Q. Hypothetically, could a chemist have 25 cases  
17 pending assigned to them waiting for them to analyze  
18 drugs?

19 A. Yes, sometimes many more.

20 Q. Would it then be possible for that many cases  
21 to sit in their personalized chemist locker?

22 A. In the general lab, yes. I can't speak for  
23 what cases are in their personal work bench lockers.

1 Q. That is what I meant, the general locker over  
2 in the lab that we looked at yesterday?

3 A. Correct.

4 THE COURT: When they removed drugs from the  
5 general locker that is assigned to them, and are going  
6 to work on testing of the drugs, and they have not  
7 finished testing, would they have put them in their  
8 personal locker at that point by their desk?

9 THE WITNESS: I would think so, but I can't  
10 speak on that.

11 THE COURT: Is there any way of knowing, or  
12 any recording of them removing it from the general  
13 locker, and putting it into their work bench locker?

14 THE WITNESS: I believe it reflects as a  
15 removed from storage, which would, in FLIMS, put it in  
16 their personal custody. Their individuals lockers in  
17 their lab benches are not documented in FLIMS.

18 THE COURT: When they remove it from the  
19 general locker, that would have been documented in the  
20 system?

21 THE WITNESS: Correct.

22 BY MR. GRUBB:

23 Q. We have heard that certain OCME personnel

1 would have what's been termed weekend access.

2 Mr. Daneshgar, if you wanted to go to work on a  
3 weekend, could you do so?

4 A. At this point yes, I could.

5 Q. Was there a time when you could not?

6 A. Yes, there was.

7 Q. So then does that lend itself to the  
8 conclusion that in order for one to have weekend  
9 access, you would have to have approval?

10 A. Yes.

11 Q. Do you get an additional key fob or code, or  
12 how does that work?

13 A. You get an alarm code for the building itself.

14 Q. You would not have that absent weekend  
15 approval?

16 A. What do you mean by that?

17 Q. So to get into the building on a normal work  
18 day you need to punch in an alarm code, right?

19 A. Yes.

20 Q. If you wanted to go in on a Saturday, as  
21 opposed to Tuesday, would there be a different code?

22 A. No, I believe the codes are designated to each  
23 personnel.

1 Q. So that makes sense.

2 So then that person would have to be cleared  
3 in order for that code to work on a Saturday or Sunday?

4 A. Yes, their code has to be annually entered  
5 into the building alarm system in order for it to be  
6 used.

7 Q. Who would you have to go through in order to  
8 obtain weekend access?

9 A. Our building maintenance manager. I believe  
10 he is the one that put the codes in working all the  
11 alarms.

12 Q. The maintenance guy is not the one who  
13 approved giving someone weekend access, is he?

14 A. No, he is not.

15 Q. Who would be?

16 A. Hal Brown is the person.

17 Q. Hall Brown is who?

18 A. Deputy Director of OCME.

19 Q. Kind of like number two in charge?

20 A. Yes.

21 Q. You touched on this yesterday, just to make  
22 sure we heard you correctly; are key fobs to be shared?

23 A. No.

1 Q. Are personalized codes to be shared?

2 A. No.

3 Q. Have you ever experienced a situation where a  
4 key fob has been shared?

5 A. No, I have not.

6 Q. Have you ever experienced a situation where a  
7 numeric unique code was shared?

8 A. No, I have not.

9 Q. Let's turn specifically to the cases that  
10 bring us here today.

11 State's Exhibit 1, page two, we looked at this  
12 yesterday. This document is what?

13 A. This is an Excel spread sheet for an inventory  
14 of cases that are submitted to our office.

15 Q. As you testified yesterday, this is the spread  
16 sheet for a Wilmington Police Department case, where  
17 drug evidence for Dilip Nyala was received on  
18 October 7, 2013, by Aretha Bailey, right?

19 A. Yes.

20 Q. Who creates this form?

21 A. I do not know who created the form. I know  
22 the officers are responsible for filling them out prior  
23 to submitting evidence to our building.

1           Q. The reason I ask, Mr. Daneshgar, is because as  
2 we move through the multiple documents in the two cases  
3 that bring us here today, this right here where it says  
4 ME courier, that title takes a different form in the  
5 Michael Irwin forms that we are going to look at. Is  
6 there any reason behind why it would be different?

7           A. Not that I know of.

8           Q. Now, this form is brought in by the Wilmington  
9 Police Department, correct?

10          A. Yes, it is.

11          Q. So no one in the OCME altered this, edited  
12 this, it's brought in by the drug custodian and then  
13 signed by whoever takes it?

14          A. Correct.

15          Q. This is not you?

16          A. That is also correct.

17          Q. On page three of State's Exhibit 1, we have a  
18 document entitled submission receipt. Are you familiar  
19 with submission receipts, Mr. Daneshgar?

20          A. Yes, I am.

21          Q. Could you describe for us in general terms --

22                 THE COURT: Sir, people who are guarding those  
23 two inmates are not going to take anything from you.

1 So you can sit there as long as you want, they are not  
2 going to take anything. At a break if you would like  
3 to talk to counsel, you may. You can't do anything  
4 now.

5 BY MR. GRUBB:

6 Q. Could you, generally, Mr. Daneshgar, explain  
7 for us what a submission receipt is supposed to  
8 represent?

9 A. We generally use them for when we are  
10 returning evidence to an agency, or evidence is being  
11 submitted to our office. It gives us the option to  
12 click into a box to signify that the evidence is --  
13 receipt will be printed displaying information that  
14 relates to that evidence.

15 Q. It's supposed to, any way, right?

16 A. Yes.

17 Q. Who creates these submission receipts?

18 A. They are formed through FLIMS.

19 Q. We discussed FLIMS yesterday, and what is auto  
20 populated, what is dropped down, what you have to type  
21 in, do the same for this submission receipt. Walk us  
22 through submitting agency, how does that end up there?

23 A. Drop down menu through FLIMS itself.

1 Q. Who selects agency, an OCME employee?

2 A. For this case it would have been Aaron Lewis  
3 from Wilmington Police Department.

4 Q. So Aaron Lewis is the one who in the drop down  
5 menu clicked on Wilmington Police Department?

6 A. It would have been part of a pre-log that he  
7 would have manually entered in some of the information  
8 on the front end before we received the evidence.

9 Q. Is that FA web that you referred to yesterday?

10 A. Yes.

11 Q. When you go into this case, this Dilip Nyala  
12 case, when you go to enter additional information into  
13 the submission receipt, that information is already  
14 there, is that what you are telling us?

15 A. Yes, it is. We are just to confirm, make sure  
16 that it is accurate to the evidence being submitted.

17 Q. The complaint number is also there?

18 A. Yes.

19 Q. FA case number, is that already there, or do  
20 you put that in?

21 A. That is generated automatically through FLIMS.

22 Q. That is already there. You don't have to do  
23 anything?

1 A. Correct.

2 Q. Submission date, how does that get in there?

3 A. Also generated through FLIMS, depending on  
4 when we receive the evidence through the data base.

5 Q. Depending on when the OCME employee types it  
6 in?

7 A. Logs it in, yes.

8 Q. So, in other words, we looked at page two,  
9 right?

10 A. Yes.

11 Q. On page two, it says Aretha Bailey received  
12 this at 1 o'clock on October 7th, fair to say?

13 A. Yes.

14 Q. Yet according to the submission receipt, we  
15 will get to this in more detail with FLIMS, the receipt  
16 says it was received on the same date October 7th but  
17 at 3:36 p.m., right?

18 A. Yes.

19 Q. Describe why the difference exists?

20 A. Because evidence was placed in a secure  
21 locker. I removed it from the secured locker and  
22 logged it in a couple hours later.

23 Q. Page two represents when the items were

1 actually received by OCME?

2 A. Correct.

3 Q. Page three represents when whoever got around  
4 to entering it into FLIMS, put it in FLIMS?

5 A. Correct.

6 Q. It says submitted by. Who puts that field in?

7 A. That would be generated through FLIMS, as  
8 well.

9 Q. Do you type in Lewis comma Aaron, pick him  
10 from a drop down menu, is that already there?

11 A. For this case it would have been FA web.

12 Q. That is already there, you don't have a  
13 choice?

14 A. Correct.

15 Q. How do we get to investigated by, do you do  
16 that; does the officer?

17 A. That is also generated by FA web.

18 Q. Because I know you are not a police officer,  
19 according to page two, Ham was the officer for Kyrie  
20 Brown. Randy Pfaff was the officer for Nyala Dilip,  
21 correct?

22 A. Yes.

23 Q. So according to that sheet that Wilmington

1 brings you, this one is wrong?

2 A. That would be correct.

3 Q. You are saying you don't put that there?

4 A. No, I do not.

5 Q. That is already there when you get in?

6 A. Correct.

7 THE COURT: Someone has to input it. Who is  
8 inputting that information?

9 THE WITNESS: The officer submitting  
10 information to our office.

11 THE COURT: When does that happen?

12 THE WITNESS: It can happen any time they  
13 collected evidence up until the minute they submit  
14 this, before they submit it to your office.

15 THE COURT: Say they came to your office with  
16 some drugs, they have not inputted this information,  
17 you don't have -- when you go into your system this is  
18 not there. Can you do anything at this point in time.

19 THE WITNESS: We would have to manually enter  
20 the case ourselves.

21 THE COURT: You would know all the other  
22 information that you could do it yourself?

23 THE WITNESS: What do you mean by that?

1           THE COURT: I think what you are telling the  
2 Court is that this document, most of the fields in this  
3 document, the upper part is done by the police agency,  
4 not by you?

5           THE WITNESS: It can be done both ways, but  
6 generally for Wilmington Police Department, it is done  
7 pre-log.

8           THE COURT: New Castle County Police, State  
9 police, everybody else?

10          THE WITNESS: Most major agencies are trained  
11 to do pre-log. A few of the southern agencies have not  
12 been trained all the way yet.

13          THE COURT: So that information would have  
14 been input by the evidence officer prior to coming into  
15 your office. So when you go to that number, it pops up  
16 and the fields that you've already inputted information  
17 would appear, correct?

18          THE WITNESS: That is correct.

19 BY MR. GRUBB:

20          Q. Do you have any independent recollection with  
21 this form as to whether or not the investigated by  
22 field was already populated through the FA web you  
23 described, whether or not you had to manually put it

1 in?

2 A. I do not have any independent recollection of  
3 that.

4 Q. So it could have been you, could have been  
5 Wilmington, either way it is wrong?

6 A. Correct.

7 Q. This information under evidence submitted to  
8 OCME, we have FA item numbers, descriptions. You see  
9 that, sir?

10 A. Yes, I do.

11 Q. How does that information get there?

12 A. We use shortcuts for entering into a couple  
13 different key strokes on the keyboard. It generates  
14 the whole envelope, which is sealed, initialled, dated,  
15 described as, and the information that would be listed  
16 in the quotes would be enter through the FA web or  
17 directly off of the evidence envelope itself.

18 Q. That information, do you cross reference it  
19 with the exterior of the evidence envelope that has  
20 been submitted to you?

21 A. Absolutely.

22 Q. Under here it says "for internal use only."

23 We see a couple names, right?

1 A. Yes.

2 Q. How do those names get there?

3 A. My name comes up automatically because I am  
4 the employee who logged in the evidence. Aaron Lewis'  
5 name would have been there due to submitting officer  
6 being selected through FLIMS.

7 Q. By you?

8 A. By myself, or through him through the pre-log.

9 Q. By someone?

10 A. Yeah. The case knows that he is the  
11 submitting officer, so it generates automatically on  
12 this form.

13 Q. Why didn't anyone sign where it says sign?

14 A. I am not sure. When I came on board,  
15 Wilmington Police Department and New Castle County  
16 Police are the only agencies who request those forms  
17 after cases are submitted to our office. I am not sure  
18 what he does with them. We have never signed them. We  
19 sign the paper chain of custody for the Excel spread  
20 sheet. That's all.

21 Q. You give those forms to County Police and  
22 Wilmington Police?

23 A. Yes.

1 Q. Don't give them to the State Police?

2 A. No.

3 Q. Any reason?

4 A. I do not.

5 Q. Date and time corresponds with the date and  
6 time up top for submission date; is that fair?

7 A. Yes.

8 THE COURT: Do you keep a copy of that, or is  
9 the document kept by the Medical Examiner's Office?

10 THE WITNESS: No, they are not.

11 THE COURT: So if it is put into the data  
12 base, once in the data base, you don't care about the  
13 form anymore. It is not a meaningful form for you to  
14 keep?

15 THE WITNESS: Correct.

16 THE COURT: Okay. Does the form have to be  
17 generated?

18 THE WITNESS: No, it does not.

19 THE COURT: For the agencies that don't want  
20 them, do you generate them for them anyhow?

21 THE WITNESS: No, we do not.

22 BY MR. GRUBB:

23 Q. Go in order now, page five, we looked at this

1 yesterday. Tell us, once again, what is this?

2 A. This is the chain of custody report for the  
3 case that FLIMS would generate.

4 Q. I will represent to you that numbers  
5 identified on page five and -- or just page five,  
6 State's Exhibit 1, correspond to Dilip Nyala's case.  
7 Walk through this on the bottom. You testified to the  
8 top yesterday, right?

9 A. Yes.

10 Q. It's broken down by container. Is that fair?

11 A. Yes.

12 Q. Is that a choice that the OCME employee  
13 entering the data makes, or is that automatic given  
14 that you have multiple containers up top?

15 A. Automatic.

16 Q. You can't blend the containers, even if you  
17 wanted to?

18 A. I could not, no.

19 Q. So you are forced to break it down by  
20 container. We have two here. Do container A.

21 We went through all the information for  
22 submitted by, right?

23 A. Yes.

1 Q. We have come to the conclusion you didn't  
2 receive that evidence, Aretha Bailey did?

3 A. Correct.

4 Q. You are the one who logged it in, so it says  
5 your name?

6 A. Correct.

7 Q. This reason here, it says "for exam." Right?

8 A. Yes.

9 Q. Does that correspond to the entry above it?

10 A. Yes, it does.

11 Q. Are there are other options that one can  
12 choose when having to populate the field "reason"?

13 A. Yes, there are.

14 Q. And that is something that the OCME employee  
15 would choose?

16 A. Yes.

17 Q. Is it something you could type in, or is it a  
18 drop down menu?

19 A. Drop down menu.

20 Q. Get to the comments that we talked about  
21 yesterday. It is blank?

22 A. Correct.

23 Q. If you want to put something in there, you

1 could. You didn't?

2 A. Correct.

3 Q. Go to the next one; October 7, 2013, same  
4 exact time as above. It says, "placed in storage  
5 second floor evidence office locker."

6 Which of the lockers that you testified to  
7 yesterday are we talking about when it says "second  
8 floor evidence office locker."

9 A. That would be the vault.

10 Q. Okay.

11 Is that a drop down menu option, is it  
12 something that you type in?

13 A. Drop down menu, as well.

14 Q. Says it was done by you, right?

15 A. Yes.

16 Q. At that time?

17 A. Yes.

18 Q. Is that an accurate representation?

19 A. Yes, it is.

20 Q. Explain that, how is that accurate, but the  
21 one above it is not?

22 A. As far as receiving the evidence, I did not  
23 receive it, but the time that it is placed in -- it was

1 placed in the locker right after it was logged in.

2 Q. Logged into FLIMS?

3 A. Yes.

4 Q. So you put it in the drug locker at 3:36 p.m.,  
5 on the 7th?

6 A. Yes.

7 Q. You testified yesterday, where did you get the  
8 drugs in order to do that, if Aretha Bailey received  
9 them at 1 o'clock, where were they?

10 A. In the secured locker.

11 Q. That is not reflected in here, is it?

12 A. No, it is not.

13 Q. How come?

14 A. I don't know.

15 Q. Next entry is March 4, 2014, 3:21 p.m., is  
16 that accurate?

17 A. Yes, it is.

18 Q. It says removed from storage by you, fair?

19 A. Yes.

20 Q. What is storage?

21 A. Would have been the evidence locker, the  
22 vault.

23 Q. So the same thing is described as second floor

1 evidence office locker, is the same thing as storage,  
2 is that what you are telling us?

3 A. Removed from storage is a drop down menu that  
4 we have in FLIMS. It does not necessarily correspond  
5 to where you are removing it from, it just gets  
6 displayed as removed from storage. If you look at the  
7 entry above it, you would know exactly what storage it  
8 was in prior to that.

9 Q. Do you have the option to put in the same  
10 thing you did on the October 7th entry?

11 A. No, I do not.

12 Q. If you wanted to be consistent, use the exact  
13 same terminology, could you?

14 A. I suppose you could. I wasn't trained to do  
15 it that way. I don't believe the system works that  
16 way. So remove from storage lists -- it changes the  
17 criteria of drop down menu, depending on if you are  
18 placing it in storage, or removing it from storage. So  
19 when you remove from storage, it takes away some of  
20 that criteria to enter in where you are removing it  
21 from.

22 Q. You could have put it in the comment section?

23 A. Yes.

1 Q. You could not have changed the drop down menu  
2 options?

3 A. Correct.

4 Q. So storage in Dilip Nyala's case on March 4th  
5 means drug vault; is that right?

6 A. In this representation, yes.

7 Q. Why would the drugs be taken out of the drug  
8 vault March 14, 3:21 p.m.?

9 A. There is part of the DSP internal audit on our  
10 building.

11 Q. You say DSP internal audit. What are we  
12 talking about?

13 A. Delaware State Police was removing cases from  
14 our office. I was familiar with the FLIMS system, they  
15 were asking me to basically be the button pusher and  
16 remove cases out of storage into what we created, which  
17 was the Delaware State Police storage in FLIMS.

18 Q. So move on to the next one you just  
19 referenced. Same exact date, same exact time, right?

20 A. Yes.

21 Q. It says you placed the item in storage at the  
22 Delaware State Police. That is what it says, right?

23 A. Correct.

1 Q. Did you do that?

2 A. No, I did not.

3 Q. Why does it say that?

4 A. Just what is generated automatically through  
5 FLIMS.

6 Q. So on March 4, 2014, what exactly did you do?

7 A. The officers would have removed evidence from  
8 the locker and read off the FE numbers to me. I would  
9 have removed them from storage in a batch, and placed  
10 them into a designated Delaware State Police storage  
11 that was created in FLIMS.

12 Q. You didn't actually put it in storage at DSP?

13 A. No.

14 Q. Is that your way of saying you gave it to the  
15 trooper?

16 A. Yes.

17 Q. Container B, we have the exact same entry with  
18 the exact same times; is that fair, Mr. Daneshgar?

19 A. Yes. It is.

20 Q. Would your answers to the same questions for  
21 container B be the same as they were for container A?

22 A. Yes.

23 Q. Let's move onto Michael Irwin multiple cases,

1 State's Exhibit 3.

2 Page two.

3 We see this form again, you called it an Excel  
4 spread sheet, correct?

5 A. Yes.

6 Q. This one is not from the Wilmington Police  
7 Department, right?

8 A. Correct.

9 Q. Who is it from?

10 A. Delaware State Police.

11 Q. Delaware State Police would bring this form  
12 with them when they drop off these envelopes for these  
13 cases?

14 A. Correct.

15 Q. At the bottom we have the submitting/receiving  
16 officer line, right?

17 A. Yes.

18 Q. Are you familiar with whose signature that is?

19 A. Sergeant Scott McCarthy.

20 Q. Is that from your experience in dealing with  
21 Sergeant Scott McCarthy on an almost a daily basis?

22 A. Yes.

23 Q. Weekly, I apologize?

1 A. Yes.

2 Q. Above it we have a date and time, right?

3 A. Correct.

4 Q. September 24, 2013?

5 A. Yes.

6 Q. That is typed?

7 A. Yes.

8 Q. So would the submitting agency in this case,  
9 the State Police, specifically Sergeant McCarthy have  
10 typed that in?

11 A. Yes, he would have.

12 Q. Move over to the right. We have a different  
13 description, it says OCME forensic evidence specialist  
14 slash designee. I asked you before, I am going to ask  
15 you again: Any idea why this description would be  
16 different on a DSP form as opposed to a Wilmington  
17 Police Department form?

18 A. I don't know why that would be different.

19 Q. Whose signature is that?

20 A. Kelly Georgi.

21 Q. She is the other FES that you testified about?

22 A. Correct.

23 Q. What is the date that it says Kelly Georgi

1 signed for this evidence?

2 A. September 24, 2013.

3 Q. We have time, right?

4 A. Yes.

5 Q. What is the time?

6 A. 1:10.

7 Q. Go right to the FLIMS chain of custody  
8 documentation, page three. First entry comes on  
9 September 30, 2013, 12:19 p.m., correct?

10 A. Yes.

11 Q. It says Scott McCarthy submitted evidence, it  
12 was received by you. Right?

13 A. Yes.

14 Q. First and foremost, did you receive this  
15 evidence from Sergeant McCarthy?

16 A. No, I did not.

17 Q. Who did?

18 A. Kelly Georgi.

19 Q. The date that we have is a completely  
20 different date, right?

21 A. Yes, it is.

22 Q. Can you explain for us, please, why Kelly  
23 Georgi signed for the drugs on the 24th of September,

1 yet the FLIMS entry reflects that you received it on  
2 September 30th?

3 A. It was at orientation at the tail end of the  
4 week the appointment would have been made. I would  
5 have logged it in as soon as I had a chance when I  
6 returned back to work.

7 Q. Which I am assuming was the 30th?

8 A. Yes.

9 Q. Why didn't Kelly just log it in?

10 A. She does not log in drug evidence.

11 Q. She has the same job as you, right?

12 A. She does.

13 Q. You have any idea why she wouldn't do it?

14 A. No.

15 THE COURT: Sorry. I am confused by that  
16 answer. Are you the only one who can log it into  
17 FLIMS?

18 THE WITNESS: There are several other  
19 employees who can. Kelly was not trained on logging in  
20 drug evidence.

21 THE COURT: How about the other two people.

22 THE WITNESS: Yes, they were trained to log in  
23 evidence.

1 THE COURT: So if Kelly took evidence, someone  
2 else would have had to enter it into the system?

3 THE WITNESS: Correct.

4 BY MR. GRUBB:

5 Q. Was that common for days when you or someone  
6 else who could log it into the system were not there,  
7 for the entry date to be off from the actual reception  
8 date?

9 A. Is that common?

10 Q. Yes.

11 A. Yes, it is.

12 Q. Where would the drugs be for the six days?

13 A. I am not sure. I removed them from the  
14 secured locker when I logged them in.

15 Q. When drugs are dropped off, you do the system  
16 that you testified to yesterday with the officer who  
17 dropped them off, that occurs where?

18 A. In the FES office area.

19 Q. That is through that door, right?

20 A. Through the first door that required the  
21 numeric padlock.

22 Q. Standard procedure is once you do that, you  
23 take drugs and put them where?

1           A.    In the secured locker.

2           Q.    Drug vault?

3           A.    Yes.

4           THE COURT:  Let me ask this question, since  
5 this is the official document from the Medical  
6 Examiner.  Do you have any documentation that is kept  
7 at the Medical Examiner's Office that would reflect  
8 that those drugs were received six days earlier?

9           THE WITNESS:  Other than the Excel spread  
10 sheet that she signed for that was dated six days  
11 prior.

12          THE COURT:  When you say Excel spread sheet,  
13 tell me what you mean.

14          THE WITNESS:  It is the inventory spread sheet  
15 that is provided with the -- that the officer provides  
16 with us when he or she is submitting evidence to our  
17 office.

18          THE COURT:  Where is that kept?

19          THE WITNESS:  That is kept in a three-ring  
20 binder in our office.

21          THE COURT:  When you entered it six days  
22 later, would you have to go back to this document?

23          THE WITNESS:  This document would have been

1 present with the evidence in the evidence vault, before  
2 I would have submitted it.

3 THE COURT: With all the evidence that is  
4 submitted by that officer on that day?

5 THE WITNESS: What do you mean by that?

6 THE COURT: There is lots of drugs submitted  
7 that day.

8 THE WITNESS: Yes.

9 THE COURT: Would all of them be kept together  
10 with that document?

11 THE WITNESS: Yes, they would be.

12 THE COURT: Okay.

13 BY MR. GRUBB:

14 Q. Is this evidence submission and return  
15 worksheet that you were just discussing, this form is  
16 kept by the OCME?

17 A. Yes, they are.

18 Q. So you have access to this form in a way that  
19 you just answered the Judge's questions?

20 A. Yes, that's true.

21 Q. So now that we get past the first one, talk  
22 about the next one very quickly. We have the same  
23 exact date, same exact time. It says placed in storage

1 second floor evidence office locker by you. Is that  
2 accurate?

3 A. Yes, it is.

4 Q. That's the actual date and time that you --  
5 after you took the drugs out, put them back in the drug  
6 vault; is that fair?

7 A. Yes.

8 Q. We get down to the next entry here for Irwin's  
9 for case, it is February 12, 2014, 11:58 a.m., right?

10 A. Yes.

11 Q. It says removed from storage by Laura Nichols;  
12 is that fair?

13 A. Yes.

14 Q. Is storage, as it is represented here, the  
15 same thing as you testified to with respect to Nyala's  
16 case?

17 A. Yes.

18 Q. Storage means drug vault?

19 A. In this entry, yes.

20 Q. In this entry?

21 A. Yes.

22 Q. Is it removed by Laura Nichols. Who is Laura  
23 Nichols?

1           A. An employee who is helping out in the FES  
2 area.

3           Q. Is it normal for Laura Nichols to remove drugs  
4 from storage for any particular reason?

5           A. Yes, it is.

6           Q. Explain that for us?

7           A. She was also assisting on transferring cases  
8 to and from the chemists for testing.

9           Q. So she is sort of, like, an internal OCME  
10 courier?

11          A. Yes, you could say that.

12          Q. Take it from point A to point B?

13          A. Yes.

14          Q. This entry here says Laura Nichols' name, does  
15 that mean it would have had to have been Laura Nichols  
16 who would have entered it?

17          A. Yes.

18          Q. You didn't put that in there?

19          A. No.

20          Q. If you wanted to go in and say Laura Nichols  
21 did that on that day, could you have created this field  
22 as it exists right now?

23          A. I cannot, no.

1 Q. So the 12th of February, at 11:58, she removed  
2 it, it says "reason for" exam. Fair?

3 A. Yes.

4 Q. What does that mean?

5 A. Case is going for analysis.

6 Q. Now, we have for exam up top, too, the case is  
7 not necessarily going for analysis, right?

8 A. No, it came to our office hopefully to be  
9 analyzed.

10 Q. That was the purpose?

11 A. Yes.

12 Q. We go down --

13 THE COURT: Did she have access to make the  
14 entry?

15 THE WITNESS: Yes.

16 BY MR. GRUBB:

17 Q. Unlike Kelly Georgi, she, to the best of your  
18 knowledge, was trained and can input data into FLIMS?

19 A. Yes.

20 Q. She did that.

21 We get down, same exact came and time, Laura  
22 Nichols put that drug evidence in storage at the second  
23 floor general lab chemists locker, right?

1 A. Yes.

2 Q. It says PWP locker, what does that mean?

3 A. It is the initial for the chemists whose  
4 locker it was going into.

5 Q. Which chemist who that be?

6 A. Patricia Phillips.

7 Q. Does Laura Nichols or you, or whoever is  
8 making that entry, do they type in the initials PWP, or  
9 is that an option that they have to select given who  
10 the chemists are in your office?

11 A. That is a drop down menu you would select for  
12 the chemist.

13 Q. It says she did that on that date. She took  
14 it out of the drug vault, put it in Patty Phillips'  
15 locker, right?

16 A. Yes.

17 Q. We then go down, it looks like the same date,  
18 but ten minutes later. It says Patty Phillips removed  
19 the item. Fair?

20 A. Yes.

21 Q. She is your chemist, right?

22 A. One of them, yes.

23 Q. For this case, I apologize?

1 A. Yes.

2 Q. Then we go down the next entry is on the 27th.  
3 So Patty Phillips removed items from storage on the  
4 12th, at 12:08, did what with it?

5 A. I am not sure.

6 Q. Is that her way of acknowledging that she  
7 received the evidence?

8 A. Generally, that would mean she was going to be  
9 working on evidence that she would have removed it from  
10 storage, put it in her personal custody.

11 Q. Even though it does not say that?

12 A. Correct.

13 Q. Does Patty Phillips have access to FLIMS?

14 A. Yes.

15 Q. That entry would have been made by her?

16 A. Yes.

17 Q. The next entry we have is some 15 days later  
18 on February 27, 1:58 p.m.; is that accurate?

19 A. Yes, it is.

20 Q. It says, "placed in storage" in what we have  
21 come to learn is the drug vault, right?

22 A. That would be second floor chemists locker,  
23 hopefully.

1           Q.   And then it has the same PWP locker by Patty  
2           Phillips.  What does that mean?

3           A.   That she placed the evidence back into her  
4           locker.

5           Q.   From that second one that we have, State's  
6           Exhibit 27, saying Patty Phillips took it from there,  
7           put it back in State's Exhibit 26.  Is that what you  
8           are saying, or no?

9           A.   Yes.

10          Q.   She did that on the 27th, right?

11          A.   Yes.

12          THE COURT:  Mr. Daneshgar, she put it back in  
13          the cubby holes.  You don't have access to it anymore,  
14          do you?

15          THE WITNESS:  It didn't go into the cubby  
16          hole.

17          THE COURT:  It didn't go into that?

18          THE WITNESS:  No, it went into the second  
19          floor general lab locker.

20          THE COURT:  Is this going to that locker, or  
21          to the locker that is back up to the general vault?

22          THE WITNESS:  No, the general lab locker would  
23          have been the picture on the right.

1 BY MR. GRUBB:

2 Q. Then, Mr. Daneshgar, the pass through area  
3 that the Judge is describing that we saw over here on  
4 the far right?

5 A. Yes.

6 Q. Is that where she took it?

7 A. No, it is not.

8 Q. That is the area that it would be taken when  
9 testing was completed; is that correct?

10 A. Yes.

11 Q. Testing was never completed in this case,  
12 right?

13 A. Correct.

14 Q. Analysis was never performed?

15 A. That is also correct.

16 Q. Is that why it wouldn't have made its way to  
17 the pass through?

18 A. Yes.

19 Q. That was taken on the 27th from Patty  
20 Phillips' locker to the general Patty Phillips' locker?

21 A. Yes.

22 Q. Reason as noted on FLIMS is "other." Can you  
23 tell us what the reason was?

1           A. We were removing them for Delaware State  
2 Police. They were going to remove them from our  
3 office.

4           Q. Was this was part of all of the drug items  
5 taken out of your office and turned over to Delaware  
6 State Police custody?

7           A. Correct.

8           Q. Next entry appears to be an entry on the same  
9 date, roughly 17 minutes later, fair?

10          A. Yes.

11          Q. It says removed from storage by you. Can you  
12 explain that entry for us, please?

13          A. Removed from storage, in this case it would  
14 have been the second floor general lab locker.

15          Q. So you took it out of where?

16          A. The second floor general lab locker.

17          Q. That is the vault?

18          A. No, that is the second floor general lab  
19 locker in the chemist lab.

20          Q. State's Exhibit 26, is that what you are  
21 talking about?

22          A. Yes.

23          Q. You took it from there?

1 A. Yes.

2 Q. Where Patty Phillips put it?

3 A. Yes.

4 THE COURT: Is it fair for me to assume that  
5 at some point in time around this period of time  
6 something went out to all chemists saying if you have  
7 any drug evidence in your personal locker, it has to be  
8 put back in the storage locker?

9 THE WITNESS: That is absolutely correct.

10 THE COURT: Everything they had stored was put  
11 back in the second floor locker, then it was your  
12 responsibility to go retrieve it?

13 THE WITNESS: Yes.

14 BY MR. GRUBB:

15 Q. Last entry we have, same date, same exact time  
16 in conjunction with your answer to His Honor on the  
17 previous question; what did you do?

18 A. Handed it over to the Delaware State Police.

19 Q. Once again, we have the same exact language,  
20 placed in storage at Delaware State Police by you, but  
21 that is not true?

22 A. Correct.

23 Q. That is you pushing the button?

1 A. Yes.

2 Q. We have container B, which I will represent to  
3 you are the exact same entries with the exact same  
4 time. Would it be fair to say your answers would be  
5 the same with respect to what you did for container B?

6 A. For container A, yes, it would have been.

7 Q. Is that normal when have you multiple  
8 containers, that would be reflected on the same  
9 documentation for a case, that the dates and times  
10 would be identical?

11 A. Yes.

12 Q. Why would that be?

13 A. Envelopes are all linked to the same case, so  
14 they would be testing each envelope part of the case.

15 Q. Back you up now to page three. This is  
16 another submission receipt, right?

17 A. Yes, it is.

18 Q. We have the same submission date as the FLIMS  
19 documentation, right, September 30, 2013, 12:19 p.m.?

20 A. Correct.

21 Q. And these drugs were received on the 24th of  
22 September, right?

23 A. Correct.

1 Q. Submitted by Scott McCarthy, that's right?

2 A. Yes.

3 Q. Investigated by Terranova, that is wrong.

4 According to the documentation that Sergeant McCarthy  
5 brought on that day, Terranova is on there, but for  
6 Michael Irwin it is Detective Russo, right?

7 A. Yes.

8 Q. We have information as described, underneath  
9 with the drugs?

10 A. Yes.

11 Q. Delaware State Police is not one of those  
12 agencies that you testified to previously that requests  
13 these types of receipts, right?

14 A. Yes.

15 Q. Why was it generated?

16 A. These would have been generated for the  
17 purpose of the DSP audit. They wanted keep track of  
18 what cases were being removed from our office.

19 Q. Back up, right. The audit happened in  
20 February 2014, through March, correct?

21 A. Yes.

22 Q. Here we are talking about when the drugs were  
23 first received by your office in September of 2013.

1 Months before the audit. Fair?

2 A. Oh, yes. That's correct.

3 Q. So then if DSP has no desire to get these  
4 forms, you don't keep the forms, why was this created?

5 A. This was created for the sake of this case, I  
6 believe. Just to justify that the -- when the evidence  
7 was submitted to our office.

8 Q. So does that then mean that you have the  
9 ability to go back retroactively and create one of  
10 these submission receipts for a drop that occurred back  
11 in September?

12 A. There is an option to print what is referred  
13 to as a selected transfer receipt, which would generate  
14 this.

15 Q. So you generated this upon request,  
16 essentially, from my office?

17 A. Correct.

18 Q. Now, you were one step ahead of me before, I  
19 refer you to page four, a separate submission receipt.  
20 Does this page, to the best of your knowledge,  
21 represent what you were previously testifying to on the  
22 State Police audit?

23 A. Yes.

1 Q. That was the purpose this was created?

2 A. Yes.

3 Q. This one, same case number, all kinds of  
4 different names. Fair?

5 A. Yes.

6 Q. So on the other one we had submitted by  
7 McCarthy. Here we have submitted by Kristie, right?

8 A. Yes.

9 Q. The other one we have investigated by  
10 Terranova, this one we have investigated by Vernon,  
11 right?

12 A. Yes.

13 Q. Complaint numbers are the same. Evidence is  
14 the same. You have different people, fair?

15 A. Yes.

16 Q. How does that happen?

17 A. I am not entirely sure. Delaware State Police  
18 told me about the issue with the selective transfer  
19 receipts some time into their audit. They didn't  
20 exactly stress an importance to getting it fixed, as  
21 long as all the other information was correct, we just  
22 continued to do business as usual.

23 Q. Was the other information correct and

1 accurate?

2 A. Complain number, FE number, the evidence  
3 itself was all correct.

4 Q. Unlike the original FLIMS entry, is the date  
5 and time that is entered onto this submission receipt  
6 for the audits, is that contemporaneous and accurate?

7 A. That would have been when it was removed from  
8 our office into their audit.

9 Q. So McCarthy takes the drugs, reads it out to  
10 you, you hit the button?

11 A. Correct.

12 Q. When you hit the button, that is what date and  
13 time is going to pop up on here?

14 A. Yes.

15 Q. That is accurate?

16 A. Yes.

17 Q. Go through the other Michael Irwin forms and  
18 ask you the same questions.

19 Page two of State's Exhibit 4, Mr. Daneshgar.

20 Another submission receipt, another Michael  
21 Irwin case, right?

22 A. Yes.

23 Q. We have the same incorrect date, September 30,

1 2013?

2 A. That is correct.

3 Q. The date you logged it into FLIMS?

4 A. Yes.

5 Q. The description of drugs is different, right?

6 A. Yes.

7 Q. Is that why there would be a separate evidence  
8 receipt?

9 A. Yes.

10 Q. Turn then to page three. Is this, once again,  
11 our FLIMS documentation?

12 A. Yes, it is the chain of custody report.

13 Q. I will put side-by-side State's Exhibit 3 page  
14 three, compare the two. So I don't have to waste your  
15 time and ask redundant questions, are the dates and  
16 times identical?

17 THE COURT: Hand him the document.

18 MR. GRUBB: May I approach?

19 THE COURT: You may.

20 BY MR. GRUBB:

21 Q. Are the dates and times with the respective  
22 personnel identical on both of these forms?

23 A. Yes, they are.

1 Q. Would it be safe to assume, then, if you were  
2 asked the same exact questions about the new form, it  
3 would be the same as your answers previously for the  
4 other State's Exhibit?

5 A. Which form are you referring to?

6 Q. The FLIMS identical forms?

7 A. Yes.

8 THE COURT: Do you know who Donald Kristie is?

9 THE WITNESS: Yes.

10 THE COURT: Who is he?

11 THE WITNESS: Submitting officer for Delaware  
12 State Police Troop 3.

13 BY MR. GRUBB:

14 Q. State's Exhibit 4, which is what I am showing  
15 you, I will represent to you there is no signed form  
16 from sergeant McCarthy or an OCME member. Is that  
17 because it would be common for a number of different  
18 items to be listed on the same form?

19 A. Can you rephrase that?

20 Q. If Sergeant McCarthy is dropping off a number  
21 of different items, as is indicated here, we have  
22 Michael Irwin on this once, twice, three times, four  
23 times?

1 A. Yes.

2 Q. So then you would have a separate evidence  
3 receipt for each item?

4 A. If they were logged in separate times, yes,  
5 they would generate their own receipt.

6 Q. Same for FLIMS, if they were logged in as  
7 separate times?

8 A. Yes, under separate FE numbers.

9 Q. Understood.

10 Returning back to State's Exhibit 4, page  
11 four, audit submission receipt appears to be the same  
12 date, February 27, 2014, at the same time, is that  
13 fair, Mr. Daneshgar?

14 A. Yes.

15 Q. Yet we have the same error with respect to  
16 names up top; is that fair?

17 A. Yes.

18 Q. Was the information with respect to the  
19 evidence submitted accurate?

20 A. Yes, it was.

21 Q. Was the complaint number accurate?

22 A. Yes, it was.

23 Q. Date and time accurate?

1 A. Yes.

2 Q. You turn to State's 2. We have an additional  
3 evidence submission and return worksheet; is that  
4 accurate?

5 A. Yes, it is.

6 Q. First name on there; can you read that?

7 A. Irwin, Michael.

8 Q. Talking about the same guy, different numbers,  
9 right?

10 A. Yes.

11 Q. This one, according to this document, these  
12 drugs were submitted to your office on what date?

13 A. Looks like November 5, 2013.

14 Q. Do we have a time?

15 A. 1 o'clock.

16 Q. Submitting officer signature, are you familiar  
17 with that signature?

18 A. Yes, I am.

19 Q. Who is it?

20 A. Sergeant Scott McCarthy.

21 Q. Now, on the right we have the same  
22 description, OCME forensic evidence specialist. Whose  
23 signature is that?

1 A. Mine.

2 Q. According to the document, you received these  
3 items?

4 A. Yes, I did.

5 Q. Turn then to page four of the same Exhibit.  
6 It says November 5, 2013, at 4:10, submitted by  
7 McCarthy to you. Is that an accurate recitation?

8 A. Yes, it is.

9 Q. Did McCarthy actually submit items?

10 A. Yes, he did.

11 Q. Did you actually receive the items?

12 A. Yes.

13 Q. Names are accurate on this one?

14 A. Yes, correct.

15 Q. But the time is different, right?

16 A. Yes.

17 Q. We have a three-hour ten-minute gap from the  
18 entry in FLIMS, to the actual receipt time by you; is  
19 that fair?

20 A. Yes, it is.

21 Q. Once again, explain to us why that three-hour  
22 and ten-minute gap exists?

23 A. Depending on what is going on that day, I

1 would have logged it in as soon as I had a chance to.

2 Q. What do you do with the drugs in the interim?

3 A. I would have placed them in a secured evidence  
4 vault in the meantime.

5 Q. That same banker box that you described to be  
6 entered?

7 A. Correct.

8 Q. In that same designated area in the drug  
9 vault?

10 A. Yes.

11 Q. Go down then, we have the same date and same  
12 time entry where it says you put the drugs in the  
13 vault, right?

14 A. Yes.

15 Q. We go down to February 12th date, is that  
16 accurate?

17 A. Yes.

18 Q. I will --

19 MR. GRUBB: Your Honor, may I approach the  
20 witness?

21 THE COURT: You may.

22 BY MR. GRUBB:

23 Q. I'm going to ask you, Mr. Daneshgar, this is

1 State's Exhibit 21 we are talking about now. I'm going  
2 to hand you State's Exhibits 3 and 4. So I don't ask  
3 you same question ten times, please review the  
4 documents, let me know if from February 12, 2014, to  
5 the bottom, if those entries are identical with respect  
6 to date, time and personnel.

7 A. Yes, they are.

8 Q. Refer you now to page three of the same  
9 State's Exhibit. Another submission receipt, right?

10 A. Yes, it is.

11 Q. This one is for a different number, correct?

12 A. Which number?

13 Q. As opposed to the previous one we looked at?

14 A. Which number are you referring to as being  
15 different?

16 Q. FE number?

17 A. Yes.

18 Q. That is why you have an additional receipt,  
19 right?

20 A. Yes.

21 Q. That one says submitted by Scott McCarthy,  
22 right?

23 A. Yes.

1 Q. That's correct. One says investigated by  
2 Russo, right?

3 A. Yes.

4 Q. According to the spread sheet, McCarthy  
5 brought it in; that is correct?

6 A. Yes.

7 Q. Can you offer any explanation, if you can't  
8 you can't, can you offer any explanation why this one  
9 would be right, the other ones had different incorrect  
10 names?

11 A. I cannot. It would have been entered -- Scott  
12 McCarthy would have entered the case on the front end  
13 with FA web, say, the same as a Wilmington case. So I  
14 am not 100 percent sure why it would have reflected  
15 different names.

16 Q. Page five, the audit submission receipt. I  
17 will represent to you the same date and time. Now we  
18 have different information, but the same numbers. Is  
19 this a receipt that would be generated from the audit  
20 when McCarthy is reading the evidence to you, you are  
21 hitting the button?

22 A. Yes, it would be.

23 Q. Are you able to tell us, Mr. Daneshgar,

1 whether or not any of the drugs in the first case we  
2 talked about, Dilip Nyala, were ever tested in the  
3 Office of the Chief Medical Examiner?

4 A. I don't believe they were ever tested.

5 Q. Are you able to tell us whether any of the  
6 drugs in the three different Michael Irwin  
7 documentation that we looked at, whether they were ever  
8 tested?

9 A. I don't believe they were ever tested, as  
10 well.

11 Q. If they weren't tested, are they supposed to  
12 be opened?

13 A. No, they are not.

14 MR. GRUBB: May I have a moment?

15 THE COURT: We can take a break. You are  
16 done?

17 MR. GRUBB: I think so.

18 THE COURT: We will take our morning break.

19 (A short recess was taken.)

20 THE COURT: Sir, you can take the stand again.

21 MR. GRUBB: While Mr. Daneshgar is taking the  
22 stand, may I inquire did the Court have an intention to  
23 take a lunch break after him, or can I have my next

1 witness ready to go. If we are taking a lunch break, I  
2 would like to let them know so they can come in later.

3 THE COURT: I planned to so stop at one. That  
4 would be my plan. I don't know how long Mr. Collins  
5 will be. If it is a while --

6 MR. COLLINS: It's going to be Mr. Roop. It  
7 will be before one.

8 MR. ROOP: I should be able to finish by one.

9 MR. GRUBB: I have no further questions, Your  
10 Honor.

11 THE COURT: I need your clients before we  
12 start.

13 CROSS EXAMINATION

14 BY MR. ROOP:

15 Q. Good morning, Mr. Daneshgar.

16 A. Good morning.

17 Q. I have a list of questions prepared for you,  
18 but I want to ask you a few preliminary questions I  
19 have, based on your testimony this morning.

20 You testified before we took our break that  
21 you believe drugs in the Michael Irwin case were  
22 tested; is that right?

23 A. I believe they were not tested.

1 Q. You believe they were not tested?

2 A. Correct.

3 Q. You don't know for sure if they were tested or  
4 not?

5 A. I would have to look at the evidence chain of  
6 custody generated by FLIMS to know if they were  
7 actually tested.

8 Q. I will represent that you that Laura Nichols,  
9 I can put it up if you like, this is State's Exhibit 2.  
10 So we already went over this part. It was received by  
11 you, transferred to evidence locker, placed in storage,  
12 eventually it was removed from storage on February 12,  
13 2014.

14 A. Yes.

15 Q. She says for exam?

16 A. Yes.

17 Q. Then we don't have any documentation of it,  
18 but we assume that she then took that to her personal  
19 locker, right?

20 A. The next entry down it would have been second  
21 floor chemists locker. The entry where Patty Phillips  
22 removed it from storage would have been her personal  
23 locker.

1 Q. Moved to there, then it goes to Patty  
2 Phillips' personal locker on the 12th, right?

3 A. Yes.

4 Q. On the 27th, that is says the reason for that  
5 was also for exam, correct?

6 A. Yes.

7 Q. On the 27th, we have that it is placed back in  
8 storage at the general lab chemist lockers. You said  
9 that was because there was an e-mail or something that  
10 went out to tell chemists when the audit was going on,  
11 to return any evidence they had in their personal  
12 lockers, right?

13 A. Verbal command that was made to them.

14 Q. Audit, Delaware State Police came and shut  
15 down the lab on the 20th, right?

16 A. Yes, I believe that is the correct date.

17 Q. So even though it is not reflected on this  
18 chain of custody report, between the 12th and the 20th  
19 she could have started testing the evidence that was  
20 there?

21 A. Yes, she could have.

22 Q. In your experience in working in this  
23 particular office, is there ever any lag time in

1 reports that are generated?

2 A. Not sure. I don't generate any of the  
3 reports.

4 Q. I also want to talk to you about the  
5 assignment the different chemists. You said you were  
6 responsible for that for a period of time?

7 A. Yes.

8 Q. And I think you said that the chemists would  
9 e-mail you whatever evidence they want to work on?

10 A. Yes.

11 Q. Then you would pull the evidence, right?

12 A. Yes.

13 Q. Then you would transport it into FLIMS, then  
14 you would take it to the locker?

15 A. Correct.

16 Q. You also testified earlier that before you  
17 transfer anything, or move anything, you are supposed  
18 to transfer it into FLIMS, right?

19 A. Yes.

20 Q. So that wasn't how you were supposed to do it,  
21 how cases were assigned?

22 A. The chemist would sent me an e-mail letting me  
23 know what cases he or she would like to work on. The

1 e-mail would be printed out and I would take the e-mail  
2 into the locker itself, pull cases for analysis, return  
3 back to my desk and remove them from evidence locker  
4 into their general locker and then escort them down to  
5 the locker myself.

6 Q. When did the FLIMS process take place?

7 A. After I remove cases from the locker, before I  
8 took them to the general lab lockers.

9 THE COURT: You said this yesterday, too, I  
10 decided to let it go. You said that when the chemist  
11 would tell you, or e-mail you what cause they would  
12 like to work on. They get to pick what drugs they were  
13 going to test, what cases they were going to test on?

14 THE WITNESS: I cannot speak on how they would  
15 do that, but I believe it was done by a priority,  
16 judging by the court dates. So they would he have a  
17 queue of maybe 100 cases that they were assigned. They  
18 would randomly pick which cases they were going to work  
19 on by priority.

20 THE COURT: So when the cases were intaked  
21 into your office, someone would have a list of all case  
22 that are now in the Medical Examiner's Office to test,  
23 and then would be assigned out chemists at that point

1 in time; is that how it worked?

2 THE WITNESS: Can you elaborate on that?

3 THE COURT: How did the chemists even know  
4 that Mr. Irwin case is this, drugs from Mr. Irwin's  
5 case is even at the Medical Examiner's Office?

6 THE WITNESS: It would have been assigned to  
7 them prior to them choosing what case they were going  
8 to work on.

9 THE COURT: How did they know, how did the  
10 assignments work? Somewhere along the line someone had  
11 to know Mr. Irwin drugs are there, right?

12 THE WITNESS: Yes, once the case is assigned  
13 to them, I believe there is a section the chemists can  
14 access that gives these them a list of cases that are  
15 assigned to them. At that point they would prioritize  
16 what cases they want to work on.

17 THE COURT: I am not saying the question very  
18 well. Before the officer brings the drugs to the  
19 Medical Examiner, inputs them into the --

20 THE WITNESS: Yes.

21 THE COURT: Does anybody have any idea in the  
22 Medical Examiner's Office what cases are coming in?

23 THE WITNESS: No, they do not.

1 THE COURT: So once they are inputted into  
2 your system, someone at the Medical Examiner's Office  
3 then assigns those cases to individual chemists, right?

4 THE WITNESS: Yes.

5 THE COURT: Do you know who does that?

6 THE WITNESS: I did it for a brief period.  
7 Aretha Bailey was doing it for a period of time.

8 THE COURT: And so the chemists then would  
9 know what cases are assigned to them?

10 THE WITNESS: Correct.

11 THE COURT: Then they would tell you which  
12 cases they want the drugs retrieved and brought to them  
13 so they could test?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Thank you.

16 THE WITNESS: I apologize.

17 THE COURT: That's all right. They are not  
18 picking and choosing. They are picking and choosing  
19 from an assignment that has been made to them earlier  
20 of a group of cases?

21 THE WITNESS: Yes.

22 BY MR. ROOP:

23 Q. I want to talk to you about the pre-load

1 system I think you call FA web?

2 A. Pre-log, yes.

3 Q. Pre-log, that means that the FLIMS data entry  
4 system is not confined to just the OCME, right?

5 A. Can you rephrase that?

6 Q. Because law enforcement has access to the  
7 pre-log, that means that the FLIMS data entry system is  
8 not confined just to your office, meaning people can  
9 enter data from outside the office?

10 A. I believe you have to have access granted to  
11 you the FA web prior to putting any information in  
12 there. It is similar to FLIMS where you would have  
13 your unique name with password.

14 Q. So if someone had the unique name and  
15 password, they can get on a computer, not necessarily  
16 in your office, and enter data into the FLIMS?

17 A. For FA web, yes.

18 Q. Does that mean that someone from there could  
19 also change data, as well?

20 A. No, once it is submitted, it gets stored up in  
21 a cloud. You cannot access it. We can only access it  
22 through FLIMS afterwards. The officer has no way to  
23 access it after he or she has submitted it.

1 Q. Then I think we established with some of the  
2 errors that we saw in the submission receipts that you  
3 are not in total control of some of the documentation,  
4 right?

5 A. Correct.

6 Q. Do you review that before it is approved, or  
7 sent out, or anything like that?

8 A. I physically take the evidence envelope and  
9 compare it to the information that is uploaded.

10 Q. I also want to show you, again, on all of  
11 them, this is State's Exhibit 1, can you see the bottom  
12 where it says prepared by Brianna Odoms?

13 A. Yes.

14 Q. Do you know who she is?

15 A. I believe she is a member of Joe Grubb's  
16 office.

17 Q. She works with the Department of Justice?

18 A. Yes.

19 Q. So does the Department of Justice have full  
20 access to FLIMS, as well?

21 A. I do not know. They contact me for the  
22 reports, chain of custody, I'm not 100 percent sure if  
23 they have access or not.

1 Q. This says prepared by her, though, right?

2 A. Yes. I'm not sure how that got there.

3 Q. Now, I am going get into some questions with  
4 you that you might not necessarily know the answers to.  
5 I know you were just kind of a worker bee there. Try  
6 to work with me and see what we can do, okay?

7 A. Yes, sir.

8 Q. So based on some of your answers, are you  
9 still working at the Office of the Chief Medical  
10 Examiner?

11 A. Yes, I am.

12 Q. You still have access to the building?

13 A. Yes, I do.

14 Q. The Delaware State Police came in on  
15 February 20th, and shut down the office, right?

16 A. That is correct.

17 Q. Although some employees of OCME were under  
18 investigation as a result of discrepancies discovered  
19 in a lab, you were assigned to help with the audit  
20 process, right?

21 A. Yes, I was.

22 Q. How were you assigned?

23 A. Because I was familiar with the FLIMS data

1 base and Delaware State Police told me I would not be a  
2 suspect or prosecuted in this investigation, they asked  
3 me to assist them in removing cases from FLIMS  
4 basically as a button pusher.

5 Q. So they told you from day one that you were  
6 not going to be a suspect?

7 A. I believe this was maybe a week after when I  
8 went in for a form of interview at Delaware State  
9 Police Troop 2 they informed me.

10 Q. Do you have any idea why one of your  
11 supervisors might not have been tasked with that  
12 position?

13 A. I'm not sure.

14 Q. Do you remember giving a statement to Delaware  
15 State Police on March 2, 2014?

16 A. Maybe. I don't necessarily recall that day.

17 Q. Do you remember giving a statement to Delaware  
18 State Police talking about what happened in your lab?

19 A. Would it have been at Troop 2? Would it have  
20 been in our office?

21 Q. I think at Troop 2 with --

22 MR. ROOP: May I have one moment, Your Honor?

23 THE COURT: Take your time.

1 MR. GRUBB: We will stipulate the interview  
2 occurred at Troop 2.

3 BY MR. ROOP:

4 Q. So does that ring a bell for you with Lt.  
5 Laird and Wallace at the Delaware State Police?

6 A. Yes.

7 Q. Do you remember in that interview you were  
8 told Hal Brown directed you to work on the audit?

9 A. I don't recall that.

10 MR. ROOP: May I approach, Your Honor?

11 BY MR. ROOP:

12 Q. This is a transcript of the statement that you  
13 gave on page 24. Direct your attention to this area  
14 here. Read that to yourself and let me know when you  
15 are done.

16 A. Okay.

17 Q. Does that refresh your memory as to whether  
18 Hal Brown directed you to help with the audit?

19 A. I believe he was the one that told me I was  
20 able to accumulate flex time from performing with the  
21 audit. I don't recall specifically if he was the  
22 employee who told me to do it. It may have very well  
23 come from Scott McCarthy and Delaware State Police

1 since I was familiar with the data base.

2 Q. Okay.

3 So do you remember if the State Police  
4 contacted you and asked you to work on it? Did you  
5 contact the Delaware State Police?

6 A. They probably would have contacted me. I  
7 don't imagine I would have went to them.

8 Q. Can you tell me a little bit about what your  
9 role was specifically in the audit? You said -- you  
10 mentioned button pusher?

11 A. Yes.

12 Q. So does that mean you were entering data into  
13 the computer?

14 A. I was removing cases from the storage locker  
15 into the Delaware State Police storage in batches.

16 Q. So you were actually touching the evidence  
17 coming out of the locker?

18 A. No.

19 Q. How were you removing it then?

20 A. Scott McCarthy or one of the officers  
21 performing the audit would remove the cases out in  
22 separate banker boxes. They would read off the FE  
23 numbers to me. I would go down, scroll down the list

1 of cases that are in the locker, and basically click  
2 and drag them in a batch.

3 Q. You never got up from your computer. You just  
4 sat there, entered data that Scott McCarthy told you to  
5 put into the computer?

6 A. Yes.

7 Q. Was anyone else assigned to work on the audit  
8 with you?

9 A. From OCME?

10 Q. From OCME. That was a poor question.

11 A. No.

12 Q. I mentioned this to you earlier, on the 27th,  
13 Patricia Phillips came in the office?

14 A. What office?

15 Q. OCME to take the evidence out of the drug  
16 locker?

17 A. She would have removed it from her personal  
18 locker. She wouldn't have removed it from the evidence  
19 vault herself.

20 Q. She was in the office on that date?

21 A. She was in the general lab on that date.

22 Q. At that point the lab was shut down by  
23 Delaware State Police, right?

1 A. Yes.

2 Q. How many other people came in the lab after  
3 the Delaware State Police shut it down?

4 A. I am not sure.

5 Q. Do you know if those people were observed  
6 while they were taking evidence out?

7 A. Not sure. All chemists were told to put cases  
8 in a general lab locker so I could access them.

9 Q. So Ms. Phillips did actually touch evidence  
10 after that date after the 20th?

11 A. Yes, she would have, if she was the one that  
12 was putting them in the locker.

13 Q. Why were you not allowed to touch evidence but  
14 Patricia Phillips was?

15 A. They were in her personal custody. I was not  
16 able to access in FLIMS to make it accurate to what she  
17 was doing, she physically put them in the locker and  
18 transferred them in FLIMS.

19 Q. So at that point you want to make an accurate  
20 record of where everything was moving around, right?

21 A. Yes.

22 Q. But when you initially entered the evidence  
23 in, you weren't really concerned with that, right?

1           A. Just the way I was taught. So I never thought  
2 it was an issue.

3           Q. Who taught you?

4           A. Taught by a combination of people who worked  
5 in the unit at that time.

6           Q. Who were they?

7           A. Laura Nichols, Aretha Bailey, James Woodson,  
8 Jack Lucy taught me a little bit on FA web pre-log.

9           Q. Based on the job description, what person was,  
10 what title was supposed to enter evidence into FLIMS?

11          A. There was no really protocol saying who was  
12 supposed to enter it in. Everyone had a helping hand.

13          Q. It wasn't limited to just forensic evidence  
14 specialists?

15          A. Correct.

16          Q. Prior to moving -- to being a forensic  
17 evidence specialist, you worked as a lab tech for a  
18 year; is that right?

19          A. Yes.

20          Q. What do lab techs do?

21          A. We assist the chemists on calibrating the  
22 balances, and preparing reagents, doing solvents in the  
23 lab that are used for analysis.

1           Q. You also would go work in the actual office  
2 that you were in now, and go test in the vault, right,  
3 test temperatures?

4           A. Yes, temperatures were tested in the vault.

5           Q. How did you get in there then?

6           A. Access had to be granted to me. I would  
7 physically have to go and knock on the door so one of  
8 the FES people in the office would let me in. If no  
9 one was present, I would come back at a later time.

10          Q. They would let you in that front door that you  
11 have to type your pin into?

12          A. Yes, they would open that door for me, open up  
13 the evidence vault, I would go in and do the  
14 temperatures.

15          Q. When you were in the vault, did they stay in  
16 there with you?

17          A. Often time these would prop, keep the door  
18 open so they could -- the person who was sitting at my  
19 desk currently would observe me.

20          Q. Did any other lab techs perform that function  
21 taking temperature in the vault?

22          A. Yes, there was another lab tech that was hired  
23 at the time, was also working the position. He was

1 doing it.

2 Q. Is that reflected anywhere that you or any  
3 other lab tech was in that vault at that particular  
4 time?

5 A. We have an actual sheet that we have to fill  
6 out for the temperatures, our initials, the date and I  
7 believe time would be listed on there.

8 Q. Then fast forward to October 2013. You obtain  
9 a position after one year there as a forensic evidence  
10 specialist?

11 A. I believe it was September, yes.

12 Q. What did you do before you came to the Office  
13 of the Chief Medical Examiner?

14 A. I worked as a chef at an Italian restaurant.

15 Q. Do you remember were there other people that  
16 applied for the forensic evidence specialists position?

17 A. Yes.

18 Q. Do you know who hired you?

19 A. OCME.

20 Q. Who, in particular?

21 A. I am not sure I understand what you are  
22 asking.

23 Q. Did you interview with anybody?

1           A. Yes, I interviewed with a panel of, I think,  
2 maybe four employees.

3           Q. So you are there for a year as a lab tech then  
4 you start as a forensic evidence specialist?

5           A. Yes.

6           THE COURT: I am having difficulty  
7 understanding all the relevance of this, because it is  
8 happening before your clients' drugs went in the  
9 Medical Examiner's Office.

10           MR. ROOP: Two or three more questions we will  
11 get there.

12           THE COURT: I hope you get there quickly.  
13 BY MR. ROOP:

14           Q. So you are only there for a short period of  
15 time. You only start in this position very recently.  
16 How did it come to be that you had all this  
17 responsibility for entering drug evidence, for  
18 maintaining a key to the door in the vault, for --

19           THE COURT: Sorry. Talk to me about what is  
20 the relevance of that. He has the functions. He is  
21 the one doing it. Whether or not you think he has  
22 qualifications for it, as to the chain of custody of  
23 this evidence, I'm not quite sure it is relevant.

1           It feels like you are trying to attack his  
2           credibility for some reason. I'm not quite sure why.

3           MR. ROOP: I want to make a record as to how  
4           he was put in the position. I think it goes to an  
5           overall -- goes to the overall how the lab was run, not  
6           necessarily him, but the decisions that were made, and  
7           why subsequent decision were made in terms of how  
8           things came out. I can move on.

9           THE COURT: The motion you have is chain of  
10          custody cannot be established by the State. That is  
11          the crux of your argument. Why he was hired, how he  
12          was hired, who hired him, seems to have no relevance to  
13          the question.

14          MR. ROOP: I'm trying to lay a foundation.

15          THE COURT: I will give you some leeway.

16          BY MR. ROOP:

17           Q. I can move on.

18           The pass through in the door, you mentioned  
19           that, and said you were the one that has the key for  
20           the door?

21           A. Yes.

22           Q. Outside cubbies were unlocked until someone  
23           pressed the button, right?

1 A. Yes.

2 Q. How big are those cubbies?

3 A. Maybe a foot deep, ten inches tall and wide  
4 maybe, approximate guess.

5 Q. Was the door on the inside of vault ever left  
6 unlocked?

7 A. Yes, it was, but it was secured shut.

8 Q. What does that mean?

9 A. Turn the handle, the door cannot be opened as  
10 long as the handle is turned. There is an actual key  
11 for the locker.

12 Q. Would you agree with me, would it be fair to  
13 say a lot of employees had access to the vault even if  
14 they were not in your position?

15 A. I wouldn't say a lot, no.

16 Q. How many people had access to the vault?

17 A. I couldn't tell you that.

18 Q. Aretha Bailey?

19 A. Yes.

20 Q. James Woodson?

21 A. Yes.

22 Q. Laura Nichols?

23 A. Yes.

1           Q.   And Aretha Bailey at the time that you were  
2 working there was working an as administrative  
3 specialist, right?

4           A.   Yes.

5           Q.   And this is State's 20, this is the office  
6 where you will meet with police officers, right, to  
7 inventory the evidence?

8           A.   Correct.

9           Q.   Is there a -- there is the computer over here,  
10 there is keyboards that you would enter the evidence  
11 into?

12          A.   Yes.

13          Q.   What was your personal policy with respect to  
14 receiving evidence and entering it in?

15          A.   We checked the inventory spread sheet to make  
16 sure that the complaint number and the defendant's name  
17 matched with the envelope, go over the evidence seal,  
18 make sure it wasn't broken.

19          Q.   I mean with respect to the timing when you  
20 received it, what was your personal goal in terms of  
21 getting it into the locker and entered into FLIMS?

22          A.   It went in the locker immediately before the  
23 officer was escorted back downstairs. I try to make it

1 priority to get to the evidence as soon as I had the  
2 chance to.

3 Q. This is State's Exhibit 1. We have already  
4 established in the Mr. Nyala's case that Aretha Bailey  
5 received the evidence in this particular case on  
6 October 7, at 1 o'clock, right?

7 A. Yes.

8 Q. You testified that you didn't enter it into  
9 the system later; is that right?

10 A. Yes, I entered it in later in the day.

11 Q. Do you know for sure what Aretha Bailey did  
12 with that evidence from the time she received it, to  
13 the time that you went back to the locker?

14 A. No, I do not.

15 Q. You just know it was in there when you went to  
16 get it. You have no idea where it was in the meantime?

17 A. Yes.

18 Q. Could it have been in her office?

19 A. She worked in the FES office, it would have  
20 been in the secured area in the office area.

21 Q. And was Aretha Bailey trained on entering  
22 things into FLIMS, as well, that was part of her job  
23 description, right?

1           A. Yes, it was not her official job description,  
2 her duties at FES she took over yes, that is part of  
3 them.

4           Q. This is State's Exhibit 2. In Mr. Irwin's  
5 case you received his evidence -- that is State's 3.  
6 Kelly Georgi received the evidence on 9/24, right?

7           A. Yes.

8           Q. Then you didn't actually enter it into the  
9 system on FLIMS, I believe you testified you were out  
10 of the office until September 30, 2013, right?

11          A. Yes.

12          Q. Do you know what Kelly Georgi did with the  
13 drug evidence in this case in between the time she  
14 received it, and when you picked it up in the locker?

15          A. No, I do not.

16          Q. Did Mrs. Georgi, or Aretha Bailey, or anyone  
17 else have personal offices within the FES office?

18          A. No, the FES office was an office in itself.

19          Q. So no one had an area to go to work to, just  
20 one open room?

21          A. They worked in the FES office.

22          Q. Caroline Honse, is that her name?

23          A. Honse.

1 Q. I will represent to you in your statement to  
2 the State Police, that you and a couple of other OCME  
3 employees were tasked with cleaning out her personal  
4 office?

5 A. Yes.

6 Q. Was she the only one with a personal office?

7 A. The chemists also had personal office areas,  
8 yes.

9 Q. So some people did have personal offices  
10 within the FES office, right?

11 A. That is not part of the FES office. That is  
12 part of the Controlled Substance Unit.

13 Q. If someone were to have something in their  
14 office outside of the FES office, they would have had  
15 to remove it from that area, and take it to the  
16 Controlled Substance Unit?

17 A. Yes.

18 Q. When did you receive your six digit code to  
19 get into the FES office?

20 A. Shortly after I was hired.

21 Q. You don't have any knowledge whether there was  
22 a record of who typed that in and when kind of thing?

23 A. I do not.

1           Q. Mr. Grubb asked you on direct whether you had  
2 experience with people exchanging key fobs or six  
3 digits codes to get into the FES office. Had you ever  
4 heard of anyone doing that?

5           A. Giving someone else their keys?

6           Q. Yes.

7           A. Not that I recall.

8           Q. Anyone ever said, hey, I will be right back.  
9 I have to run to the bathroom, go ahead inside, enter  
10 my code to get in?

11          A. Not that I recall.

12          Q. Do you know off the top of your head who the  
13 individual would be that would have access to the  
14 vault, some people in FES wouldn't have access to the  
15 vault, right?

16          A. If you work in the FES area, you should have  
17 had access to the vault.

18          Q. Everyone did.

19          A. From what I understand, yes.

20          Q. Do you recall a time -- do you know of a time  
21 when Aretha Bailey did not have access to the vault?

22          A. I was not working there during that time. I  
23 cannot speak on that.

1           Q. You testified a little bit yesterday about the  
2 four-digit pin to deactivate the alarm on the vault  
3 itself, right?

4           A. Yes.

5           Q. Someone turned that off in the morning?

6           A. Yes.

7           Q. Turned it back on at night, right?

8           A. Correct.

9           Q. Was that the policy, was it always supposed to  
10 be left unarmed all day, was it supposed to be  
11 reactivated each time?

12          A. When I was in the position, that was the way  
13 it was being done.

14          Q. You don't know if there was a policy,  
15 procedure, or standard operating procedure, anything  
16 like that?

17          A. I don't believe there was a standard operating  
18 procedure on it, no.

19          Q. You also testified that you were not able to  
20 come in on nights or weekends, right?

21          A. That is correct.

22          Q. Initially. Now you can, before you could not?

23          A. I was granted access for the audit and was

1 working late nights with them.

2 Q. You are aware that Aretha Bailey and Caroline  
3 Honse would come in on weekends, right?

4 A. I wasn't there on weekends. I don't know if  
5 they were there or not.

6 Q. Had you heard they were going in on weekends?

7 A. I had heard they had access to, but I can't  
8 speak to if they did or not.

9 Q. Did you ever speak with James Woodson about  
10 him expressing concerns --

11 MR. GRUBB: Your Honor, objection. I'm trying  
12 to give a lot of leeway. James Woodson has absolutely  
13 nothing to do with Michael Irwin or the Dilip Nyala  
14 case. These questions about him are irrelevant.

15 MR. ROOP: There is information about him  
16 expressing concern about them being there on weekends,  
17 Aretha Bailey and Caroline Honse, who do have something  
18 to do with this case, cases.

19 THE COURT: I will let you ask the question.  
20 But you seem to be looking at a huge picture when the  
21 motion is whether or not there is a chain of custody  
22 issue. People who, best I can tell, have nothing to do  
23 with the chain of custody. I will let you ask some

1 questions. You need to focus on the chain. That's  
2 okay, you can ask the question. I will give you some  
3 leeway since it's cross.

4 BY MR. ROOP:

5 Q. Did you ever have a conversation with  
6 Mr. Woodson where he expressed concerns about Aretha  
7 Bailey and Caroline Honse coming in the office on the  
8 weekends?

9 A. Yes, but because I did not observe it myself.  
10 I cannot speak on it.

11 Q. Did you ever hear Bailey talk about coming  
12 there on weekends?

13 A. Maybe, but I don't recall exactly if she did  
14 or not.

15 Q. If you know, if Bailey, if Aretha Bailey were  
16 the only person in the office on the weekend, would  
17 anyone be there with her?

18 A. Forensic investigators that were on-call may  
19 have been in the building. As far as the office area  
20 goes itself, no, I don't believe so.

21 Q. She would have been by herself?

22 A. In the office area yes, not the building.

23 Q. To get in on the weekends, someone needs an

1 actual code to the overall building, right?

2 A. Yes.

3 Q. Do you know anyone else that worked on the  
4 weekends in your lab?

5 A. No, I do not.

6 Q. Are you aware of any other instances where the  
7 door would be propped open for people to go into the  
8 vault inside the lab.

9 A. The vault itself, unless you were going in and  
10 going right out, I don't know why it would be propped  
11 open.

12 Q. You were never there when it was left propped  
13 open for people to go in and go out?

14 A. If it would have been propped open, there  
15 would have been someone in their office through the  
16 secured door with the six digit code.

17 Q. Talk about the camera that you referenced  
18 earlier. What did you mean, again, referring to your  
19 statement back on March 2nd. Do you recall telling the  
20 State Police that the prescription pills are behind the  
21 camera?

22 A. That is where they were located. I would have  
23 testified to that.

1           Q. Why did you say that? Does that mean they are  
2 all off camera, like, not recorded?

3           A. They are out of the camera's view.

4           Q. Is that also what you meant when you said that  
5 you can get away from the camera's eyes inside the  
6 vault?

7           A. The camera is an affixed camera facing the  
8 door, so facing down any of the aisles down by the pass  
9 through it is not being monitored.

10          Q. I will also represent to you that you said to  
11 the detectives, you can access any evidence in there  
12 pretty much without that camera seeing you. Do you  
13 remember saying that?

14          A. With the exception of cases that need to be  
15 logged in, anything down an aisle the camera did not  
16 see you.

17          Q. What do you mean with the exception of cases  
18 being logged in?

19          A. The bankers boxes on the right-hand side when  
20 you enter the evidence, it is in sight of the camera.  
21 It is facing the door, but the rolling shelves that  
22 evidence has been logged in already, there is just  
23 aisles where the camera does not get a view in.

1 Q. All it would do is catch you coming into the  
2 actual room?

3 A. Yes.

4 Q. After that, you could do anything you wanted  
5 you wouldn't necessarily be seen?

6 A. Correct.

7 Q. How well do you know Aretha Bailey? I know  
8 you weren't there very long; did you have any  
9 interaction with her?

10 A. Other than just in her office, how you doing,  
11 have a nice day. No.

12 Q. Do you recall in your statement to Delaware  
13 State Police that you said that Aretha Bailey, because  
14 of her title, did not have access to the vault, should  
15 not have had access to the vault. Do you recall saying  
16 that?

17 A. I was under the impression everyone who worked  
18 in the office should have access to the vault, but an  
19 admin specialist should not have access to the vault.  
20 Her title does not grant her access to the vault in our  
21 building, but because she was working in the office,  
22 she was granted access to the vault.

23 Q. Who granted her access?

1 A. I don't know.

2 Q. She had complete, unfettered access to that  
3 room?

4 A. What do you mean by that?

5 Q. She could go in the vault any time she wanted  
6 as long as she had the code and key fob, right?

7 A. From what I understand, yeah.

8 Q. Do you remember an occasion where Aretha  
9 Bailey would bring her kids in to work with her?

10 A. Yes.

11 Q. And some of them were in their 20s. One was  
12 in high school, I think you said in your statement?

13 A. He may have been, I was guessing when I told  
14 Delaware State Police that.

15 Q. You were guessing.

16 A. Yes, when I told them that.

17 Q. Do you know if she ever took them upstairs to  
18 the second floor?

19 A. I believe I saw them in there a few times,  
20 yes.

21 Q. In there. Just on the second floor?

22 A. The office area.

23 Q. They were in the office area?

1 A. Yes.

2 Q. When was that?

3 A. I don't haven't an exact date.

4 Q. What were the old boxes of cases that you  
5 found in the evidence locker?

6 A. What do you mean by that?

7 Q. At a certain point when you were working as an  
8 FES, you made note that the evidence locker was kind of  
9 maintained sloppily, disorganized; do you remember  
10 that?

11 A. That may have been my term. I can't recall  
12 that.

13 Q. Did you find any kind of old boxes of cases  
14 that weren't really affiliated with anything when you  
15 were in there?

16 A. There were boxes of older cases dating back a  
17 few years.

18 Q. Who were they connected to?

19 A. There was a box for R and D for Caroline Honse  
20 and a couple other boxes that weren't really assigned  
21 to anybody.

22 Q. Caroline Honse was your supervisor?

23 A. Yes.

1 Q. And do you recall ever seeing Aretha Bailey  
2 and Caroline Honse in the evidence vault together?

3 A. No, I did not.

4 Q. No?

5 A. No. Office area, yes. In the vault, no.

6 Q. You never saw them in the vault together?

7 A. Not that I recall.

8 Q. Did you ever see any other people in the vault  
9 together, was this supposed to be single in, single  
10 out?

11 A. It wasn't necessarily single in/single out.  
12 You had to have access to gain entry.

13 Q. What were in the boxes that you found in  
14 Caroline Honse's office?

15 A. I believe there was training samples that were  
16 in there.

17 Q. Training samples?

18 A. Yes.

19 Q. What does that mean?

20 A. Proficiency tests, fake cases basically to  
21 test the chemists' proficiency on drugs that were being  
22 analyzed.

23 MR. ROOP: Can I have one moment, Your Honor?

1 THE COURT: Take your time.

2 (Discussion held off the record.)

3 BY MR. ROOP:

4 Q. This is Exhibit 3, a couple more questions,  
5 okay.

6 A. Sure.

7 Q. This is, again, the Irwin case. Laura Nichols  
8 removed evidence taken to the general lab locker.

9 Right?

10 A. Yes.

11 Q. Then Patricia Phillips took it out?

12 A. Yes.

13 Q. Eventually she returned it, it says on 2/27,  
14 shortly after that, n Phillips returned it to the  
15 general locker, that you removed it from the evidence  
16 locker. Did you remove it from the locker, or did the  
17 Delaware State Police remove it from the locker?

18 A. Reflects that I removed it, but Delaware State  
19 Police are the people who actually removed it.

20 Q. That is inaccurate?

21 A. Yes.

22 Q. At this point you testified earlier that you  
23 were trying to make it an accurate chain of custody as

1 possible, right, at this point in time?

2 A. Yes.

3 Q. So why didn't you put it in the comments?

4 A. We weren't told to do that. I was never told  
5 to use the comment section for anything.

6 Q. Do you have a relationship with Farnam  
7 Daneshgar?

8 A. Yes, I do.

9 Q. Who is that?

10 A. My father.

11 Q. Were you living with him at the time the lab  
12 was shut down?

13 A. No, I was not.

14 MR. GRUBB: Objection, Farnam Daneshgar has no  
15 relevance to Irwin or the Nyala case. It is the  
16 witness's father who is currently under indictment.  
17 Any relevance with any questions whatsoever with  
18 respect to him the State objects to.

19 MR. ROOP: May I have a moment, Your Honor.

20 (Discussion held off the record.)

21 MR. ROOP: Your Honor, I think it is relevant  
22 to these proceedings. Although our motion does discuss  
23 chain of custody, it does talk about overall

1 reliability of the entire office. Our argument goes to  
2 whether chain of custody can be established, not only  
3 from hand-to-hand, who touched what, also the  
4 reliability of what is in the form, who said what, and  
5 I think it is relevant that the particular person that  
6 was tasked with helping the Delaware State Police with  
7 the audit is related to someone that was charged in  
8 this particular incident. So I think it is relevant  
9 and a fair question for him to answer.

10 THE COURT: I don't. If you want to pursue  
11 it, come to sidebar and tell me where you are going.  
12 It is fair or you to ask whether or not he is his  
13 father. It is fair for you to ask whether or not he  
14 had any interaction with him while he was working at  
15 the lab. But general questions aren't particularly  
16 helpful.

17 I am not sure how you are going -- what you  
18 want to ask. So if you want to pursue it, I will need  
19 to hear it at sidebar. I will let you decide.

20 MR. ROOP: Come to sidebar.

21 (Discussion held off the record.)

22 (The following sidebar conference was held.)

23 MR. ROOP: I'm trying to establish a

1 relationship between the two. Yes, his father, I mean  
2 the question was being asked to ever work on the case  
3 with him. I do think it is relevant for all the  
4 motions, making a record, you know, what the  
5 relationship was, what the extent of it was. I believe  
6 there is allegations in the indictment, at least with  
7 what's been reported in paper there was evidence or  
8 potential evidence seized back at FES Daneshgar's  
9 house. If he is living in a house with FES Daneshgar,  
10 there is drug evidence there, you have this guy  
11 performing an audit, I think this raises questions not  
12 only in terms of reliability of the office before, then  
13 also with how this audit was carried out.

14           Already there's been an issue with the audit,  
15 how reports were kept. You have someone that might  
16 have something in it to make it look good.

17           THE COURT: Well, I am a little bit confused  
18 about your last comment. I don't know of anything that  
19 has been written in any motion, maybe I am wrong, that  
20 you are articulating that something is improper with  
21 regard to the audit. Once it was seized by the  
22 Delaware State Police, it appears to have been stored  
23 by the Delaware State Police, appears to have been

1 maintained properly by them. So I am not quite sure  
2 where you are leading with that.

3 That is it. You want to do that, you are  
4 going to have to tell me something other than what you  
5 told me. I know of nothing to suggest that once the  
6 drugs were seized by the Delaware State Police  
7 something wrong happened.

8 Now. We will get to that. At this point if  
9 that is not true. Tell me you have something.

10 MR. ROOP: Something I am trying to explore.

11 THE COURT: You have to have a good faith  
12 basis to ask the question.

13 MR. ROOP: If it is his father, he is  
14 indicted --

15 THE COURT: Go back to my question, forget the  
16 father for a minute. Are you claiming that in regards  
17 to those two gentlemen, that something was amiss in  
18 regards to how the audit occurred with the Delaware  
19 State Police? I will ask both of you, that does not  
20 appear to be the issue.

21 MR. COLLINS: I think we are going -- the  
22 issue with Mr. McCarthy there wasn't much guidance on  
23 how to do the audit. We have two auditors, two guys

1 who checked this evidence testifying after this guy  
2 gets done. Yes, I think there will be testimony, I  
3 didn't really expect it, but I think there will be, the  
4 audit wasn't conducted very well, but I don't know what  
5 that has to do, we can move on from this. I am just --  
6 I do think that as the evidence is coming in, it kind  
7 of demonstrated yesterday, I think Your Honor actually  
8 asked some questions, wasn't a lot of meetings or  
9 guidance about how to actually perform the audit which  
10 is different than this guy's stuff.

11 THE COURT: For the father, you can ask him  
12 whether or not it is his father. Ask him whether or  
13 not did he have any interaction with him while he was  
14 at the lab, but generally asking was his father under  
15 investigation, was he indicted, that is not helpful.  
16 It has to have some relevance to something that has  
17 occurred here. Did your father have access to the lab  
18 area. I don't know who this person, he got indicted.  
19 I don't know who he is.

20 MR. GRUBB: Your Honor, just to make an  
21 extremely brief record with respect to audit, he has  
22 testified his only role with the audit is to sit at a  
23 computer and hit a button. Scott McCarthy has read

1 something to him. He never went to Troop 2, never at  
2 the Delaware State Police. Any questions that  
3 Mr. Collins and Mr. Roop have for the auditors are  
4 certainly fair game. They will be here next. He has  
5 zero knowledge and it has zero relevance as to whatever  
6 argument they will make. The actual audit was done  
7 back at Troop 2. He is the wrong guy to ask. Getting  
8 his father into it is strictly gratuitous. He got  
9 arrested. It has nothing to do with Irwin or Nyala.  
10 Making it about the overall OCME which I have -- my  
11 fault I have not objected too much.

12 I want to give a lot of leeway, whatever comes  
13 out of the record will be in evidence. Their expert  
14 will testify. I have made Lieutenant Laird available  
15 to Mr. Collins to call as his witness. To just pile on  
16 James Daneshgar for something he has no idea about is  
17 irrelevant, and not proper.

18 MR. ROOP: Was part of the -- audit was part  
19 of the --

20 MR. GRUBB: You asked him what was your role.  
21 He never left the computer area. That was your  
22 question.

23 MR. COLLINS: May I be heard for a moment.

1 It's not my witness. I think the only thing we need to  
2 get to make a record, was his father granted access to  
3 the building after February 20th. Your Honor asked the  
4 question, I assume an e-mail went out to all chemists  
5 to get your evidence out of your lockers, et cetera.  
6 That is the only thing I think that needs to be  
7 established here, and for purposes of this witness.

8 THE COURT: If you want to ask him whether he  
9 knows whether or not his father was given access to the  
10 evidence locker after the State Police became involved  
11 you can ask him that question. That is fair game. As  
12 long as he does not go any further than that. If this  
13 is what you are trying to ask him. If he says yes,  
14 then maybe that leads out someplace else. My  
15 assumption would be the answer is no.

16 MR. COLLINS: Can I get some guidance on a  
17 separate topic. Your Honor made a comment about the  
18 motion being about chain of custody as to these two  
19 guys, which it is. But it is also argument the gist of  
20 the argument is that because of the misfeasance and  
21 malfeasance a lab, generally speaking, that the Court  
22 in the exercise of its discretion should exclude  
23 evidence as unreliable. We haven't gotten to that part

1 of this. I wanted to make sure of that, otherwise I  
2 can just send my expert home.

3 THE COURT: I am not -- that was -- the  
4 comment was made in connection what who was hired, who  
5 hired him, that is no particular relevance to anything.  
6 I understand part of your argument chain is that even  
7 if the chain appears to be wrecked, it is unreliable  
8 because of what was happening at the lab. That is kind  
9 of the basis. I understand that. But questions that  
10 were asked had no particular relevance to that. The  
11 fact he was hired, the fact that he was chosen to help  
12 the State Police, how he was chosen, not quite sure  
13 that has any relevance to anything.

14 Certainly I understand that you are arguing  
15 chain of events, if it appears to be correct on paper,  
16 is unreliable because based upon the lab. You are free  
17 to explore that area.

18 MR. COLLINS: Thank you, Your Honor.

19 THE COURT: As far as the father, you can ask  
20 him whether or not after the date the State Police  
21 became involved he was gaining access to the lab. If  
22 he says yes, you can explore. If he says no, that ends  
23 the inquiry.

1 MR. COLLINS: Thank you, Your Honor.

2 (Sidebar conference concluded.)

3 BY MR. ROOP:

4 Q. Mr. Daneshgar, there is testimony that the  
5 Delaware State Police shut down the lab on  
6 February 20th. If you know, was your father granted  
7 access to the lab after February 20th?

8 A. His office is in one of the labs. So, yes.

9 Q. After the 20th, because he was a chemist,  
10 right?

11 A. Yes.

12 Q. He went into the lab to presumably, if you  
13 know, remove evidence from his personal locker, right?

14 A. Yes.

15 Q. Do you know what he did with that evidence?

16 A. I do not. I know I found it in the general  
17 lab locker.

18 Q. Because he is a chemist, you have those 12  
19 general lockers, does he have a key that opens each and  
20 every one of those lockers?

21 A. No, he has three of the bank lockers with  
22 combinations to it.

23 Q. So there is three in a group, combination code

1 opens all three?

2 A. Yes.

3 MR. ROOP: One moment, Your Honor.

4 THE COURT: Sure.

5 (Discussion held off the record.)

6 MR. ROOP: Nothing further.

7 REDIRECT EXAMINATION

8 BY MR. GRUBB:

9 Q. Just a few follow-up questions, Mr. Daneshgar.

10 Did your father have any connection physically  
11 touching the envelopes, or whatsoever with any case  
12 involving Michael Irwin that you are aware of?

13 A. No.

14 Q. The case that we are talking about today went  
15 through all the documents, your father's name anywhere?

16 A. No.

17 Q. Same question with respect to Dilip Nyala.

18 Any connection whatsoever?

19 A. No.

20 Q. We heard about a box that was in the lab  
21 manager Caroline Honse's office to be used for training  
22 samples, right?

23 A. Yes, I believe that was what the contents

1 were.

2 Q. Any of the drugs, any of the contents belong  
3 to Michael Irwin?

4 A. Not to my knowledge.

5 Q. Any of the drugs belong to Dilip Nyala's case?

6 A. Not to my knowledge.

7 Q. We heard the term shutdown. Let's specify  
8 here, February 20, 2014 Delaware State Police came in  
9 the building and locked the drug vault as you testified  
10 to previously; is that accurate?

11 A. Correct.

12 Q. Were the employees assigned to the Controlled  
13 Substance Unit still to report to work everyday after  
14 that?

15 A. Yes, they were.

16 Q. So everyone was still showing up to work,  
17 right?

18 A. Yes.

19 Q. It's not like the office was shut down where  
20 everyone is staying home, was it?

21 A. No.

22 Q. So, now, the lab that was referred,  
23 previously, it was termed the lab was shut down. What

1 exactly do you mean by that?

2 A. Testing was ceased.

3 Q. No more testing going on, right?

4 A. Yes.

5 Q. People can still come and go through the lab,  
6 right?

7 A. Yes.

8 Q. Testing was shut down, would the office of the  
9 Chief Medical Examiner after February 20, 2014, still  
10 receive new drug items from law enforcement?

11 A. No, we did not.

12 Q. That component was shut down, too?

13 A. Correct.

14 Q. You were asked, I think you answered, whether  
15 or not Aretha Bailey was by herself when she was in the  
16 drug vault on the weekends. Do you recall that  
17 question?

18 A. Yes.

19 Q. Were you ever with Aretha Bailey on the  
20 weekend inside that building?

21 A. No, I was not.

22 Q. Do you have any idea whether or not she would  
23 be alone or chaperoned, or with her kids, or with Hal

1 Brown, or with anyone?

2 A. I have no idea.

3 Q. You were also asked about six-day gap from  
4 September 24, 2013, to September 30, 2014, on one of  
5 Michael Irwin's cases. Do you recall that,  
6 Mr. Daneshgar?

7 A. Yes, I do.

8 Q. You were asked did you know what Kelly Georgi  
9 did with the drugs after she received them; do you  
10 recall that?

11 A. Yes, I do.

12 Q. Your answer was no, right?

13 A. Yes.

14 Q. Now, you have had a conversation with Kelly  
15 Georgi since that, right?

16 A. Yes.

17 Q. Basically in preparation for this hearing?

18 A. Yes.

19 Q. Today.

20 Do you know what she did with drugs? What did  
21 she say she did with the drugs?

22 A. Told me she put them in the secured locker  
23 before she escorted the officer back downstairs.

1           Q. For the record, Your Honor, so it does not  
2 appear I am big disingenuous, defense counsel and I  
3 have spoken about certain hearsay statements coming in  
4 to streamline things.

5           Relative same question --

6           MR. COLLINS: May I have a moment with  
7 counsel, Your Honor.

8           THE COURT: Sure.

9           (Discussion held off the record.)

10          BY MR. GRUBB:

11           Q. Did you also speak to Patty Phillips, the  
12 chemist listed on documents for the Michael Irwin  
13 cases?

14           A. In preparation for this case?

15           Q. Yes, about the Michael Irwin case?

16           A. Maybe, I don't recall exactly what was  
17 discussed.

18           Q. One specific question with regard to that: Do  
19 you recall specifically whether or not she said that  
20 she tested the drugs in the Michael Irwin case?

21           A. I don't recall her saying that she did.

22           Q. Then on the documentation, State Exhibit 4  
23 page three, Mr. Roop pointed out at the bottom prepared

1 by Adams, comma Brianna, is that right?

2 A. Yes.

3 Q. She works at Department of Justice, right?

4 A. Yes.

5 Q. She is your primary point of contact for  
6 controlled substance cases?

7 A. Yes.

8 Q. Would she have the ability to, as it is  
9 termed, granted, prepare anything with respect to the  
10 entries that you previously testified to?

11 A. No, she would not.

12 Q. Is that a fancy way of saying she printed  
13 that?

14 A. You could say that.

15 MR. GRUBB: No further questions, Your Honor.

16 RE CROSS EXAMINATION

17 BY MR. ROOP:

18 Q. What did you do to prepare for this hearing.  
19 You prepared -- you talked to Mrs. Georgi, who were all  
20 the people that you talked to prepare for this hearing?

21 A. Mr. Grubb, Kelly, Kelly Georgi, Laura Nichols,  
22 Patty Phillip.

23 Q. When did you talk to Laura, Patty, and Kelly?

1 A. We had a mock trial last week.

2 Q. You had a mock trial last week?

3 A. Yes.

4 Q. And did you talk to them before the mock  
5 trial, during the mock trial, or after the mock trial?

6 A. During, primarily doing.

7 Q. Was that as a result of your meeting with  
8 Mr. Grubb?

9 A. Yes.

10 MR. ROOP: Nothing further, Your Honor.

11 MR. GRUBB: Nothing further, Your Honor.

12 THE COURT: You can step down.

13 MR. GRUBB: May this witness be excused?

14 THE COURT: At the moment I assume so. You  
15 can sit down. I take it from comments that have just  
16 been made you are not intending to call the person who  
17 actually received some of drugs or a lab chemist.

18 MR. GRUBB: Correct, Your Honor.

19 Mr. Daneshgar was the only OCME employee that State  
20 intends to put on the stand.

21 THE COURT: Have they been made available?

22 MR. GRUBB: They have been. They were all  
23 here for the entirety of the afternoon yesterday. I

1 had them scheduled to come back again this morning.  
2 But in communications that defense counsel and I had  
3 last night, I was told they would not be called by the  
4 defense, and rather Lieutenant Laird of the Delaware  
5 State Police would be called as a defense witness.

6 THE COURT: Today there seems to be some  
7 questioning by Mr. Roop about whether or not testing  
8 actually was done, or started, stopped. I don't know  
9 how if counsel resolved that to say there was no  
10 testing done or the envelope was not opened.

11 MR. COLLINS: I need a moment with counsel  
12 before I answer that question.

13 THE COURT: Okay.

14 (Discussion held off the record.)

15 MR. COLLINS: Sorry, I think I interrupted the  
16 Court.

17 THE COURT: I am just -- I appreciate  
18 counsels' efforts to try to streamline it so it goes as  
19 smooth as possible, but we at least have some question  
20 that was made of whether or not the evidence was  
21 actually -- testing actually began on the drugs but  
22 were not completed, or is counsel satisfied that there  
23 appears to be no Medical Examiner tape on the package,

1 and therefore even if opened, it seems to me they would  
2 have had to tape it back up, and initial it. So I'm  
3 just trying to make sure there is not an assertion that  
4 the chemist actually opened up the package. If so,  
5 there should be some evidence of that, which would  
6 normally be the Medical Examiner's tape being on the  
7 document. If it is not on there, that would lead me  
8 conclude it wasn't open. If there is a dispute.

9 MR. COLLINS: If I can have access to  
10 Ms. Phillips for a two-minute phone call, I could  
11 probably advise the Court I wouldn't be calling her,  
12 wouldn't call in her. The testimony as it stands now,  
13 is Mr. Daneshgar has testified that he does not believe  
14 that she tested the drugs and the Court makes salient  
15 points about the lack of tape.

16 I was going ask Mr. Grubb for her contact  
17 information, then if I was satisfied with a  
18 conversation with her to not call her as a witness to  
19 establish that and leave the record the way it is.

20 THE COURT: Well, I need to know whether or  
21 not counsel is satisfied that the drugs were not opened  
22 and not tested. That makes -- that is an issue. If it  
23 would appear based on what the envelope looks like that

1 did not occur. So I don't want counsel to leave the  
2 hearing with that issue unsettled. It may be settled  
3 by the two of you talking to her, or not, but it seems  
4 to me we either need to know whether or not the  
5 envelope was ever opened up at the Medical Examiner's  
6 Office. That may have a bearing on what you would want  
7 to do.

8 MR. COLLINS: Mr. Grubb has indicated he will  
9 put her on for a few questions to make that record.

10 THE COURT: We will stand in recess until  
11 2 o'clock.

12 (A luncheon recess was taken.)

13 THE COURT: Ready to go?

14 MR. GRUBB: Yes, Your Honor.

15 THE COURT: You may call your next witness.

16 MR. GRUBB: State calls Patricia Phillips.

17 PATRICIA PHILLIPS,

18 having been first called by the State was sworn on  
19 oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GRUBB:

22 Q. Good afternoon.

23 A. Hi.

1 Q. Ms. Phillips, you are a chemist at the Office  
2 of the Chief Medical Examiner?

3 A. I am.

4 Q. You were a chemist this 2013, as well?

5 A. Yes.

6 Q. I draw your attention specifically to evidence  
7 envelopes associated with Michael Irwin, okay?

8 A. Okay.

9 Q. Did you ever open the drug evidence envelopes  
10 associate with Mr. Irwin?

11 A. No.

12 Q. Did you ever test the drugs and analyze  
13 them --

14 A. I did not.

15 Q. -- that were associated with Michael Irwin  
16 envelopes?

17 A. No.

18 MR. GRUBB: Thank you. No further questions.

19 CROSS EXAMINATION

20 BY MR. COLLINS:

21 Q. Hello.

22 A. Hi.

23 Q. How do you know that?

1           A. I checked in our FLIMS where there would be a  
2 notation I had done so.

3           Q. Okay. So just to be clear, you don't have any  
4 independent recollection of Michael Irwin's drug  
5 evidence, right?

6           A. No.

7           Q. Which makes sense because you have --

8           A. A batch.

9           Q. -- a ton of cases batches all in your locker,  
10 I get that. So, in order to prepare for your testimony  
11 today, it sounds like what you are saying you made  
12 reference to the FLIMS system?

13          A. Yes.

14          Q. To see what recordations were made in there,  
15 to -- well, not to refresh you recollection, but just  
16 to look and see if you had recorded that you had done a  
17 test?

18          A. Yes.

19               MR. COLLINS: Okay, thank you.

20               THE COURT: Let me ask you this question. We  
21 know, it appears from the records that clearly you did  
22 not do a test. Not only does the record not reflect  
23 that, but there is no lab result test done. We also

1 know that it appears that the evidence in regards to  
2 this case had been assigned to you, having been given  
3 to you, and it also appears that you actually moved the  
4 evidence on February 12, of 2014, as one of the cases  
5 that you would potentially begin to work on.

6 THE WITNESS: Right.

7 THE COURT: And returned on the 27th. You  
8 took it on the 12th, it was returned by you on the 27th  
9 of February. If you had begun the test, but had not  
10 completed it, because of investigation they asked you  
11 to return the drugs, how would I know that? How would  
12 it be reflected?

13 THE WITNESS: There would be, it would be  
14 notated there was a worksheet generated.

15 THE COURT: Would you have also taped the  
16 envelope back up with your initials?

17 THE WITNESS: If I had opened it, I would have  
18 taped it.

19 THE COURT: So if I saw a white Medical  
20 Examiner tape with your initials, that would have  
21 indicted you had opened it, but not completed the test,  
22 if there is --

23 THE WITNESS: Any case that I open would have

1       been sealed back, as soon as I moved it from my desk  
2       area, it would have been sealed and initialed.

3               THE COURT:   If you had opened it and put it  
4       back in the locker, you would have sealed it, put it  
5       back, and initialled the tape?

6               THE WITNESS:  I would have and I would have  
7       made a notation on a worksheet.

8               THE COURT:   Thank you.

9                               RE CROSS EXAMINATION

10       BY MR. COLLINS:

11               Q.   You referenced a worksheet.  What worksheet  
12       are you referring to?

13               A.   There would be a worksheet generated in the  
14       FLIMS if I had opened a case.  The first thing I would  
15       do when I have a case in front of me would be to open a  
16       worksheet with the date on it, and the case name, and I  
17       would do that before I slit open an envelope.

18               Q.   It sounds like what you are saying that FLIMS,  
19       among many other properties, has the capacity to  
20       develop a worksheet when you tell it to?

21               A.   Yes.

22               Q.   Is that fair to say?

23               A.   Yes.

1           Q. In conjunction with this worksheet being  
2 created, an event is reported in its chain of custody  
3 recording that says that you created a worksheet, is  
4 that what you are saying? You may not know the answer  
5 to that because you have probably never seen a chain of  
6 custody?

7           A. I'm really not certain of that. I don't  
8 typically deal with the chain of custody worksheet.

9           Q. Fine. When you do test drug evidence, you  
10 promulgate results, what forms do those results take,  
11 is it this worksheet you referenced?

12          A. The worksheet is generated as I go, while data  
13 is entered into the worksheet from when I start it, to  
14 notations about the evidence itself, or the envelope,  
15 results from testing, and then that will generate into  
16 a report.

17          Q. Do you type up your own reports?

18          A. The report is generated, it scrapes  
19 information from the worksheet, and then I complete  
20 such as where the report would go, and follow-up with  
21 checking it for accuracy that follows, you know,  
22 punctuation and such. But the information itself is  
23 scraped off of the FLIMS worksheet.

1 Q. So the report populates from previously  
2 existing data inside FLIMS?

3 A. Yes.

4 Q. It sounds from what you are saying, you don't  
5 give anything to an administrative assistant to say  
6 type this up?

7 A. No.

8 Q. You handle all your own reports?

9 A. Yes.

10 Q. Would the same be true of other people in the  
11 same position as you within the OCME drug lab?

12 A. Yes.

13 Q. Everyone did their own reports?

14 A. Yes.

15 MR. COLLINS: Thank you.

16 REDIRECT EXAMINATION

17 BY MR. GRUBB:

18 Q. Briefly, Your Honor.

19 Mrs. Phillips, does a worksheet or a lab  
20 report exist in Michael Irwin's cases?

21 A. No.

22 MR. GRUBB: Thank you.

23 THE COURT: You can step down. Thank you.

1 MR. GRUBB: Your Honor, next State's witness  
2 is Gary Taylor.

3 GARY JOHN TAYLOR,

4 having been first called by the State was sworn on  
5 oath, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GRUBB:

8 Q. Good afternoon, Mr. Taylor.

9 A. Good afternoon.

10 Q. Where are you currently employed?

11 A. Employed by the State of Delaware Department  
12 of Justice.

13 Q. In late February, early March of this year  
14 2014, what was your job title with the Department of  
15 Justice?

16 A. I was a special investigator.

17 Q. At some point in time, were you assigned to be  
18 one of the auditors this were inspecting and checking  
19 the drugs removed from the Medical Examiner's Office?

20 A. Yes, I was.

21 Q. Where did you do that?

22 A. At Troop 2 Delaware State Police.

23 Q. Prior to your career in the Department of

1 Justice, where did you work?

2 A. New Castle County Police.

3 Q. How long were you with the County Police?

4 A. 20 years.

5 Q. During your 20 years with the County Police  
6 were you ever involved with drug cases?

7 A. Yes, sir.

8 Q. Can you please briefly describe to the Court  
9 your experience in the area of drug cases and  
10 narcotics?

11 A. Throughout my career, patrol, I investigated  
12 drug cases, specifically 2006 through 2010, I was  
13 supervisor for the undercover drug unit.

14 Q. You are familiar with drugs?

15 A. Yes, sir.

16 Q. It is our understanding from previous  
17 testimony that there would be audit teams rather than  
18 audit individuals when checking various evidence  
19 envelopes; is that accurate?

20 A. Correct.

21 Q. Could you elaborate on that for us, please?

22 A. Teams were two people, one person was assigned  
23 to scribe. That person would be the one making any

1 notes and documenting on a form. The other person  
2 would be the one that is responsible for checking the  
3 envelope, and opening the envelope to verify the  
4 contents.

5 Q. Was there any science as to who was designated  
6 to do which job?

7 A. No, we did keep our team consistent.

8 Q. Let's walk through the entire process, if we  
9 could, please?

10 A. Yes, sir.

11 Q. You report to Troop 2, right?

12 A. Yes, sir.

13 Q. And once you get there, please explain for us  
14 what occurs?

15 A. We would go into a secured room inside the  
16 evidence area. Once we are in there, you had a  
17 supervisor from the Delaware State Police who was  
18 handling the boxes of evidence. That supervisor would  
19 be the person in charge of handing out the individual  
20 envelopes to be inspected to the teams.

21 I would receive the envelope for our team, at  
22 that point I would look at the envelope, see what the  
23 contents are supposed to be, look at the envelope for

1 any initial issues that stand out; tears, rips, cuts,  
2 openings. The scribe would look at the front of the  
3 envelope, and take down information related to the  
4 envelope such as the case number, or the ME number  
5 associated with it, document that on there. The scribe  
6 then prior to me opening would document the time. Once  
7 I open it, examine it, and then we close it assuming  
8 there is no issue. The scribe would then sign,  
9 initial, write the time down it was closed, and whether  
10 there was a discrepancy or no discrepancy on the form.

11 Q. Mr. Taylor, if I could back you up for a  
12 moment. You alluded to some of the things you would do  
13 when inspecting the evidence envelope. Correct?

14 A. Correct.

15 Q. What sort of red flags, if you will, would you  
16 look for in determining whether or not that evidence  
17 envelope has its integrity preserved, or has been  
18 tampered with?

19 A. What we would do, what I would do specifically  
20 is prior to opening the envelope, I would examine it,  
21 and again, looking for anything that would stand out,  
22 different color tape, areas that appear to have been  
23 cut open or peeled open, or torn. Looking for anything

1 that would indicate any type of an entry was made into  
2 the envelope at all.

3 Not seeing anything, I would find a clean spot  
4 on the envelope to then use a razor knife to open it to  
5 examine the contents.

6 Q. You say clean spot to open the envelope?

7 A. Correct.

8 Q. Just so I am clear, would you slit open the  
9 evidence tape that is already on there from the  
10 seizing/packaging officer, or no?

11 A. No. Clean spot means an area that had not  
12 been tampered with or touched in anyway as much as  
13 possible. We found an envelope we would be able to  
14 open up from another area what we call a pristine spot,  
15 open it from there to examine the contents.

16 Q. Why would you do that, Mr. Taylor?

17 A. Because if we got into the envelope, and found  
18 what appeared to be signs of tampering with the  
19 evidence, then that would be turned over to Delaware  
20 State Police for further examination.

21 Q. Now, in examining the contents, moving from  
22 the envelope to the actual drugs that were purported to  
23 be inside the envelope.

1           Were there be certain drugs that you would  
2 have to count and verify the quantity?

3           A. Yes.

4           Q. Could you elaborate on that, please?

5           A. A lot of it would depend on what the officer  
6 writes on the envelope. If they put 23 pills, for  
7 example, put 23 Xanax pills. We would count out the  
8 number of pills, and if the pills were stamped with  
9 anything, we would verify the stamping through a drug  
10 book, per se, on the computer. Verify that what is  
11 listed as Xanax is what is, in fact, in the envelope.

12          Q. If the evidence envelope that you were  
13 auditing at the time had notated however many baggies  
14 of a particular drug should be inside, would the audit  
15 team, you specifically, then go ahead and verify that  
16 the number is accurate?

17          A. Yes.

18          Q. Let's talk about weight. How would the audit  
19 team go about verifying the weight of the drug that was  
20 on the exterior of the evidence envelope at the time of  
21 the audit?

22          A. In most cases, depending on the size of the,  
23 or the amount listed for the weight, we would use, in

1       our case we had a digital scale we used.

2           Q.   Was that scale calibrated, sir?

3           A.   To my knowledge, no.

4           Q.   Sorry, please continue.

5           A.   Just as far a calibration when I say no, I am  
6 not aware of it being other than when it was first  
7 purchased when they are calibrated upon purchasing.  
8 Beyond that, I don't know if the Delaware State Police  
9 for a fact have or have not. I don't believe they were  
10 calibrated beyond purchase.

11                   We would weigh the contents, to assume that  
12 they are the approximate weight that was listed on the  
13 envelope. The weight number that is listed on that  
14 envelope was used as an approximation weight because --  
15 when we are weighing the envelope, or weighing the  
16 contents of the envelopes, we are not using the same  
17 scale that was used; and we are not sure if it was  
18 weighed in packaging, not packaging. How the original  
19 officer when they packaged it weighed it. How they did  
20 their weight.

21           Q.   So we are clear, you are referring to the  
22 original seizing and packaging officer, whatever they  
23 notated you are not using the same scale. You are

1 accepting they made an approximation?

2 A. Weight would be an approximation.

3 Q. I apologize. You referenced scales, what  
4 other considerations would the audit team give in  
5 weighing the item and seeing if it did not match up  
6 identical to the weight that was on the outside of the  
7 envelope?

8 A. Very small amounts of weights would be  
9 visually inspected. So if they said .2 grams of  
10 marijuana, we look at it, and if there appears to be  
11 green plant-like material consistent with marijuana in  
12 a small amount. Then visually, inspected it could be  
13 consistent with.

14 Q. If the weight that you came up with, once you  
15 took the drugs out of the envelope and weighed it, did  
16 not match up identically with what was purported on the  
17 outside of the evidence envelope, does that  
18 automatically indicate to you that there is a criminal  
19 discrepancy where you would circle yes on form that we  
20 will eventually get to?

21 A. Not at all. As I alluded to earlier, some of  
22 the considerations when doing weighing is; one, scales  
23 could be different. Not knowing how it was weighed

1 originally, whether it included packaging, did not  
2 include packaging, sometimes things had multiple  
3 packaging involved. So it could be inside two glassine  
4 baggies. So we don't know how originally the weight  
5 was obtained.

6 So when we would weigh it, we would weigh it  
7 to see when we put it on as is, whether it was  
8 consistent with, within a reasonable approximation of  
9 the listed weight that is on the envelope.

10 On top of that, if there was any type of  
11 discrepancy on that, again, we look at still  
12 reexamining the envelope to see if there is anything to  
13 indicate anything was tampered with in another way,  
14 entry was made into the envelope. If not, there is no  
15 sign of tampering, the envelope appears consistent,  
16 weight approximation is consistent, no discrepancy.

17 Q. Was there a firm standard operating procedure  
18 that was implemented for you and your fellow audit team  
19 members with respect to how to conduct this audit?

20 A. Not a written SOP. No, sir.

21 Q. Could you explain for the Court, please, how  
22 did it come to be that you were given instructions on  
23 what to do?

1           A. Again, what we were doing was examining the  
2 envelope for the integrity of the envelope to see if  
3 there was any indication of tampering with. That is  
4 the first layer. The second layer then is comparing  
5 what is in the envelope to what is listed as what  
6 should be in the envelope. Verifying that that is, in  
7 fact, still consistent with what we have.

8           Q. Assuming that you did identify something that  
9 was a discrepancy, what action would you take?

10          A. Anything that was found to be a discrepancy  
11 that we could not explain based on a drying weight  
12 issue that may have been with marijuana, packaging  
13 material, or was outside a scope of what could be a  
14 reasonable weight difference would be turned over -- we  
15 would notify the supervisor at that point of the  
16 Delaware State Police, who then would handle the  
17 follow-up investigation into the envelope, into the  
18 police report, things of that nature.

19          Q. Are you familiar with the approximate weight  
20 law enforcement in the State of Delaware would give in  
21 approximating the weight of heroin?

22          A. Yes, sir.

23          Q. At the time of the audit I should say, from

1 March of 2014, February 2014 prior?

2 A. Yes, sir.

3 Q. Would you take that into account, as well,  
4 when you are determining whether or not to mark  
5 something as a discrepancy?

6 A. Yes, sir.

7 Q. After notating on the form there would be a  
8 discrepancy, would you take additional steps?

9 A. We would turn that envelope over, other than  
10 what we noted it on the form, the form and the envelope  
11 with the discrepancy would be turned over to Delaware  
12 State Police.

13 Q. Anyone in particular?

14 A. Supervisor that was running the operation at  
15 that time.

16 Q. Would that be either, I guess it would vary  
17 depending on the day?

18 A. Most cases it was like Sergeant McCarthy or  
19 Sergeant Matt Taylor they would notify a representative  
20 of the criminal investigations unit to come in to then  
21 handle it from there.

22 Q. Was the audit team expected to, or responsible  
23 for field testing any of the drugs that you inspected?

1 A. No, we did not test any of the drugs.

2 Q. Once you resealed the evidence envelope, did  
3 you do so with evidence tape?

4 A. Yes, we did.

5 Q. How was the evidence tape provide to you?

6 A. It was Delaware State Police evidence tape.

7 Q. Did you make any additional markings on the  
8 area that you slit open to get into the envelope?

9 A. Yes, I would initial it, and date it.

10 Q. Turn your attention to two cases. First and  
11 foremost, I will show you from State's Exhibit 1, page  
12 six. Are you able to see that?

13 A. Yes, sir.

14 Q. Is this representative of the audit form  
15 entitled OCME Investigation at the top there that you  
16 would use when documenting what your findings were on a  
17 particular evidence envelope?

18 A. Yes, it is.

19 Q. Now, up top, we have a number of fields. I  
20 will direct you to inspected by. On this one we see, I  
21 believe it reads P. Sawyer slash G. Taylor; is that  
22 accurate?

23 A. Correct.

1 Q. You are the Gary Taylor there?

2 A. Yes.

3 Q. Who is P. Sawyer?

4 A. Captain Pete Sawyer of the Delaware State  
5 Police.

6 Q. We have the date, right?

7 A. Yes, sir.

8 Q. Time opened?

9 A. Yes.

10 Q. Can you tell from the handwriting here as to  
11 whether or not you or Captain Sawyer was the scribe on  
12 this particular case?

13 A. Captain Sawyer was the scribe.

14 Q. Time closed part is empty, right?

15 A. Yes.

16 Q. For discrepancy where it says yes or no,  
17 neither is circled, fair?

18 A. Correct.

19 Q. We will come back to why that is. Under  
20 comments, we have a complaint number; is that correct?

21 A. Yes, sir.

22 Q. And next to that, there is a name; is that  
23 accurate?

1 A. Yes, sir.

2 Q. That is Nyala Dilip, correct?

3 A. Yes, sir.

4 Q. What is the purpose of putting those notations  
5 on the form?

6 A. Just for matching it up to the envelope.

7 Q. Down here, we get to an A and a B. Fair?

8 A. Yes, sir.

9 Q. There are notations made on this form. I  
10 won't speak for you, explain for us, please, what the  
11 notations mean with respect to the A and B?

12 A. A and B means there were at least two bags,  
13 one marked A, one marked B.

14 Q. With respect to A, it says bag count of heroin  
15 okay. Right?

16 A. Yes, sir.

17 Q. So I assume that means that you guys went  
18 through the heroin baggies and counted them out each  
19 individually?

20 A. Yes, sir.

21 Q. Matched up?

22 A. Yes, sir.

23 Q. Baggy of crack weighed at 44.5 grams,

1 envelopes list 48 grams?

2 A. Yes, sir.

3 Q. Is this an example how you would document a  
4 weight discrepancy?

5 A. Yes, sir.

6 Q. Under here it says "container B okay"?

7 A. Yes, sir.

8 Q. What are we to take from this simple listing  
9 that says okay?

10 A. There is no discrepancies at all.

11 Q. Let's go back to the discrepancy part.

12 Neither is circled. Are you able to explain for us why  
13 that is?

14 A. Yes, sir.

15 Q. Please do?

16 A. In short term, it was an oversight by the  
17 scribe. The reason that would have been delayed in  
18 initially filling it out is because verifying the  
19 weight difference that we had as noted down below.  
20 Once we were reexamining the bag, I reexamined the bag,  
21 and reassured that the bag did not show signs of  
22 tampering, that the integrity was good and that the  
23 issue may have been a paraphernalia weight of the bag

1       which contains the crack cocaine, or it was a scale  
2       issue, since we used a different scale altogether than  
3       what he had used.

4               We are not sure how it was weighed on the  
5       original part they had 48 grams. Based on the  
6       examination of the bag, and examination of the contents  
7       in the bag it did not appear there was any integrity  
8       issues or compromise of the evidence.

9               MR. GRUBB: May I approach the witness, Your  
10       Honor?

11              THE COURT: You may.

12       BY MR. GRUBB:

13              Q. Mr. Taylor, we went over the complaint number  
14       that is noted on your audit form for the Nyala case. I  
15       will hand you what has been admitted into evidence as  
16       State's Exhibit 5, and State's Exhibit 8 respectively.  
17       If you could, please, take a look and see if the  
18       complaint number matches up accurately from the audit  
19       form to evidence envelopes?

20              A. Yes, the complaint number matches.

21              Q. I will show you State's Exhibit 6. We are  
22       looking at the back of the evidence envelope, right?

23              A. Yes, sir.

1           Q. Explain for us, if you could, please, what are  
2 we looking at here and what is relevant for your  
3 testimony with respect to the audit?

4           A. What you are looking at here is the back side  
5 of the evidence envelope, is noted up top you see where  
6 when I say top right, clear tape that is on there.  
7 When I received the envelope, after we check the front  
8 of it, see what the contents are, again it is examined  
9 to make sure there was no obvious signs of tampering or  
10 compromise of the envelope.

11           The next part is I am going to find a place to  
12 open the envelope and typically, as much as possible go  
13 to the opposite end of the envelope away from where the  
14 bag was initially sealed, where there was no signs of  
15 anything to indicate the bag was compromised and open  
16 it there.

17           That would be where I make entry into the  
18 envelope to retrieve the contents.

19           Q. Is that what you did here, sir?

20           A. Yes, sir.

21           Q. Go ahead.

22           A. As noted, the blue evidence tape that is on  
23 there was the evidence tape we were using when we were

1 resealing the envelopes back up. My initials are on  
2 the envelope, GT, with the date also on the evidence  
3 tape.

4 Q. State's Exhibit 9. Are you able to tell us  
5 what we are looking at here?

6 A. Yes. Again, the back side of an evidence  
7 envelope, as noted by the, again, blue tape would have  
8 been what I used to go into the envelope, away from the  
9 other -- as far as I could away from the other entries  
10 that were made into the envelope.

11 Q. I will represent to you that I showed you the  
12 back of the evidence envelopes from the previous two  
13 Exhibits in the photographs that I showed you  
14 representative of the same complaint number on your  
15 audit form, okay?

16 A. Okay, sir.

17 Q. I will direct your attention to a second case.  
18 On the screen is State's Exhibit 2, page six. Can you  
19 tell us what we are looking at, please?

20 A. Yes. Again, we are looking at the sheet that  
21 is used by the for the OCME investigation, the scribe  
22 would use for making notations when we go into the  
23 envelope.

1 Q. Taylor notated on there, that's you?

2 A. Yes.

3 Q. You are not with Captain Sawyer anymore, you  
4 are with someone different?

5 A. Yes.

6 Q. Who are you with?

7 A. Robert Durney.

8 Q. Also an employee in the Department of Justice?

9 A. Yes.

10 Q. You have a date?

11 A. Yes, sir.

12 Q. Time opened, time closed, right?

13 A. Yes.

14 Q. It didn't take you guys very long at all to  
15 finish up this envelope?

16 A. Not at all.

17 Q. Approximately one minute?

18 A. Yes, sir.

19 Q. For the discrepancy section, no was circled?

20 A. Correct.

21 Q. At the bottom we have the complaint number?

22 A. Correct.

23 Q. No other notes?

1 A. Correct.

2 Q. Why would there be no other notes?

3 A. There was no absolutely no issue, compromise,  
4 discrepancy at all with that envelope.

5 Q. If there was, would you have noted it?

6 A. Yes, sir.

7 MR. GRUBB: May I approach the witness again,  
8 Your Honor?

9 THE COURT: You may.

10 BY MR. GRUBB:

11 Q. I will hand you the audit form we just  
12 discussed, as well as what has been admitted into  
13 evidence as State's Exhibit 13. If you could please  
14 look at them both and let us know if the complaint  
15 number matches up.

16 A. Yes, it does.

17 Q. Thank you.

18 THE COURT: Before you take the envelope away,  
19 Officer, is there a weight on the envelope that the  
20 officer put in when he arrested Mr. Irwin?

21 THE WITNESS: Yes, sir, there is.

22 THE COURT: Can you tell me since you weighed  
23 the last one, why you wouldn't weigh this one?

1 THE WITNESS: We would have weighed it, sir.

2 THE COURT: It is not noted, correct?

3 THE WITNESS: Well, it is noted in the sense  
4 there was no discrepancy and the weight, approximate  
5 weight listed on here was the approximate weight showed  
6 on the scale.

7 THE COURT: Thank you.

8 BY MR. GRUBB:

9 Q. Mr. Taylor, if there was a weight listed,  
10 would you regularly consistently attempt to verify that  
11 weight?

12 A. Yes, if there was not a small amount of  
13 weight.

14 Q. As you did testify to.

15 Then follow-up, if there was no discrepancy,  
16 you simply write nothing?

17 A. Correct.

18 Q. State's 17, this is the back of the evidence  
19 envelope that you just looked at.

20 What are you able to tell us about this  
21 photograph?

22 A. As can you see, the officer that initially  
23 placed this evidence envelope into evidence had sealed

1 pretty much every possible part of the envelope. So I  
2 had to pick, again, the bottom portion that was not  
3 tampered with, and go in through there to remove the  
4 contents of the envelope. As you note, my initials  
5 again are on the evidence tape that I used, as well as  
6 the date.

7 Q. I will ask you, Mr. Taylor, as to the  
8 conclusion for the Dilip Nyala case, was that case  
9 comprised according to you, or not?

10 A. Not at all.

11 Q. With respect to the Michael Irwin envelope  
12 that you inspected, was there a criminal compromise or  
13 not?

14 A. Not at all.

15 Q. You are aware during the course of the audit  
16 there were a number of cases where a criminal  
17 compromise was believed to have existed and documented;  
18 is that correct?

19 A. Yes, sir.

20 Q. Neither one of those two fit that bill,  
21 correct?

22 A. No, sir.

23 MR. GRUBB: Thank you. No further questions.

## 1 CROSS EXAMINATION

2 BY MR. COLLINS:

3 Q. How many teams of two were there?

4 A. It would vary depending on the day. There was  
5 usually no less than two teams, there were times that  
6 there was more.

7 Q. Who was in charge of you?

8 A. That, again, also would vary. Consistently it  
9 was Sergeant McCarthy and Sergeant Matt Taylor.

10 Q. Is --

11 MR. GRUBB: May I have a moment with counsel,  
12 Your Honor?

13 (Discussion held off the record.)

14 BY MR. GRUBB:

15 Q. That is Scott McCarthy from DSP?

16 A. Yes.

17 Q. Are you saying he acted in the supervisory  
18 role over the teams?

19 A. Yes, sir.

20 Q. Step back a second. The lineage of this story  
21 began with some evidence having been discovered as  
22 tampered with during a trial; are you aware of that?

23 A. Yes, sir.

1           Q.   Subsequently, OCME CSU was doing its own  
2 internal audit to see what was going on. Are you aware  
3 of that?

4           A.   Yes, sir.

5           Q.   On January 20, 2014, the vault was locked --  
6 February, the vault is locked, access to it is revoked  
7 within OCME. The Delaware State Police audit team, in  
8 essence, takes over, right?

9           A.   I am not sure of the dates on all that. Yes,  
10 I do understand it was shut down and they took control.

11          Q.   So we have a little problem maybe, which was  
12 kind of verified by OCME as a growing problem, to the  
13 point where the Department of Justice decided to launch  
14 an investigation, right?

15          A.   Yes, sir.

16          Q.   And you are apart of that investigative team  
17 in the sense that you participated as an auditor; is  
18 that right?

19          A.   Correct.

20          Q.   So what were your marching orders? What was  
21 your training?

22          A.   Okay, the marching orders, per se, was exactly  
23 what I was saying earlier was to my specific role was

1 to look at the integrity of the envelope, look at what  
2 was documented on the front of the envelope, what  
3 evidence was supposed to be contained within the  
4 envelope, then assuming that there was no obvious signs  
5 of tampering, or the integrity issues with the  
6 envelope, make entry into that envelope. Verify the  
7 fact that the contents listed were consistent with the  
8 contents found within it.

9 Q. I get what you did. I didn't want to  
10 interrupt your testimony. What I am asking you is:  
11 Who was in charge? What were you told to do? How was  
12 the information disseminated, or was it just, McCarthy  
13 or someone else just say have at it and start looking  
14 into this stuff?

15 A. We were specifically told to do exactly, that  
16 is why we had two teams. One was a scribe, one was  
17 doing what I was doing. That was how we would were  
18 told to operate.

19 Q. Were you initially briefed by anyone as to  
20 what protocol to employ during this massive audit?

21 A. We did have meetings. We did discuss prior to  
22 going into that, yes.

23 Q. Maybe I didn't ask that very well.

1           Before any evidence was touched by any of you,  
2 did someone in charge sit everyone down, and say, all  
3 right, team, we are about to begin an audit. Talk  
4 about what rules to deploy so this audit is consistent,  
5 and accurate?

6           A. Yes, sir.

7           Q. Who did that?

8           A. My recollection would be it was the Delaware  
9 State Police that were involved with that. I remember  
10 specifically how we were going to operate. Who exactly  
11 shared those words, I can't tell you. I listened to  
12 what was directed to do, I did it.

13          Q. You are saying there was a -- I am going to  
14 call it, make up my own term, call it a kickoff meeting  
15 that took place that you attended, but you don't know  
16 who spoke at the meeting?

17          A. Who specifically gave marching orders, not one  
18 hundred percent, only we did have meetings about what  
19 was going to take place.

20          Q. You have been a police officer for a long  
21 time. I know you have a lot of experience. Have you  
22 ever started a major investigation with just no initial  
23 meeting where SOPs were discussed, policies,

1 procedures, so there would be consistency among the  
2 auditing teams?

3 A. Not sure what you are asking.

4 Q. I'm not trying to be vague. With your  
5 experience as an officer who has been involved in many  
6 hundreds of drug investigations, would you agree with  
7 me that it is important that things like -- not talking  
8 about where there is potential compromise of evidence,  
9 just talking in general, isn't it important things be  
10 taken care of properly, precisely, and accurately?

11 A. The way we conducted the audit were we were  
12 specifically told, you know, as far as here is the  
13 sheets that you were going to use to fill out, have a  
14 scribe do that. The other person is to, again, do what  
15 I have expressed what I was doing. When we found the  
16 discrepancy, we were to notify the person in charge,  
17 which was either Sergeant McCarthy or Sergeant Taylor  
18 most of the time with that discrepancy, they would  
19 handle the follow-up.

20 I may be wrong, I think what you are asking,  
21 were we given written instructions specific to the task  
22 involved the responsibilities. If that is the question  
23 no, we were not -- there was not a written SOP on what

1 we were to do. We were verbally instructed of  
2 responsibilities, and protocols on what to do if a  
3 discrepancy is found.

4 Q. You anticipated my next question, thank you.  
5 I was going to ask if there was a written SOP or  
6 procedure manual, or anything of the sort.

7 It sounds to me, I think you already testified  
8 that no, there was not?

9 A. Correct.

10 Q. You already testified that although you  
11 attended this meeting that you don't recall who gave  
12 it, you didn't take any notes during this meeting?

13 A. Correct.

14 Q. Was your work audited subsequently?

15 A. You mean, like, an independent on us after  
16 what we had --

17 Q. Yes.

18 A. My answer to that was going to have to be yes  
19 and no to my knowledge. In that, the evidence we would  
20 do, if it was going to go for further testing for  
21 prosecution, it was going to an outside lab who then  
22 would proceed with their protocol.

23 Q. Say that again, I didn't really understand

1 that.

2 A. What we are doing on the front end is we are  
3 ensuring that the envelope that we have is not tampered  
4 with, that it is consistent with the evidence inside is  
5 what is on the outside. Once we did that, we resealed  
6 that envelope, and marked it as shown. After that, if  
7 that case, or any of those cases were going to go  
8 forward that still needed to be tested for what the  
9 contents were, an outside lab, my understanding, there  
10 was an outside lab hired to do that testing. So they  
11 would be in involved weight. They would do their own  
12 weighing. They would do their own examination of the  
13 contents of that envelope.

14 Q. That wasn't really the question I asked you.  
15 It was a helpful response, nonetheless. You are saying  
16 that you were also relying -- when I say you, I mean  
17 the audit project, in general, was also relying on the  
18 case that was sent to NMS for NMS labs to do their own  
19 in independent weighing and things like that?

20 A. No sir, I'm not relying on them to do that.  
21 You asked if there was anybody else checking on our  
22 work.

23 Q. Right.

1           A. In that sense my answer was yes and no, in  
2 that yes because some of those envelopes such as, for  
3 example, these here since they were not tested here  
4 would have probably have gone to NMS for testing for a  
5 more accurate scale weight for, I am assuming they are  
6 using certified scales. If it wasn't going forward,  
7 no, there was nobody rechecking our work.

8           Q. That is the question. I want to say from  
9 memory that the number of evidentiary items was in the  
10 eight to nine thousand range. Does that sound about  
11 right?

12          A. Yes, sir.

13          Q. Was there any protocols in place in which some  
14 second-level auditor would pull five percent of those,  
15 one percent of those, two percent of those, pull them  
16 and verify the work done by the audit team?

17          A. Not to my knowledge, sir.

18          Q. All right.

19                 Now, you would agree that each individual --  
20 each team had a fair amount of discretion as to action  
21 to take as to any sample, right?

22          A. I don't know when you say "fair amount," you  
23 know, I mean, we have what would be reasonable

1 expectations.

2 Q. For example, on the Nyala suspected cocaine,  
3 police weight was 48, that was you found to be 44.5,  
4 that causes you some concern. You note it on the form.  
5 That is an approximately ten percent gap between the  
6 police weight and the audit weight, would you agree?

7 A. Three-and-a-half grams.

8 Q. So I am just saying the difference between 48  
9 and 44.5 is about a ten percent different, right?

10 A. Okay.

11 Q. Is three-and-a-half grams out of 48. So that  
12 triggered something for you. Right?

13 A. Yes.

14 Q. Why? Your own discretion, or was there some  
15 rule about how many grams or percentage of grams  
16 something could be off before it caused you to flag it.

17 A. There was no percentages or specific number of  
18 grams to say you are going to flag it at X amount. In  
19 that case there was a discrepancy, again of 3.5 grams  
20 that, again, we could not say that it was not a scale  
21 issue or packaging weight issue.

22 Q. That's fine. I am not criticizing that, I am  
23 just saying, what is Mairua's rank, sergeant?

1 A. Sorry?

2 Q. Tom Maiura?

3 A. Corporal.

4 Q. Corp. Maiura probably sitting next to you  
5 doing some other bag of evidence?

6 A. Correct.

7 Q. Is there any guarantee if he had gotten that  
8 exact same envelope, he wouldn't have made a totally  
9 different decision than you did?

10 A. No, because if we would have felt there was a  
11 criminal discrepancy, any of us, all teams, our  
12 protocol was to notify whoever was in charge. So if he  
13 had felt there was a -- this is a criminal discrepancy,  
14 he would make note to them. They would then evaluate  
15 whether they felt there was sufficient supporting  
16 evidence that there was a criminal discrepancy.

17 Q. Okay.

18 A. We had, to go back to the question, yes and no  
19 in that if there was -- any team suspected a criminal  
20 discrepancy, we had a protocol to follow.

21 THE COURT: What is your definition of a  
22 criminal discrepancy?

23 THE WITNESS: It would be a weight that is

1       unable to explain through scale issue or a  
2       paraphernalia issue, meaning the bags or bag that it  
3       may have been contained in, and as long as were within  
4       an approximation of what is listed, because the amount  
5       that is listed on that envelope is also truly an  
6       approximation, as well. So as long as we are within  
7       what would be considered a reasonable approximation,  
8       based on the contents of the envelope that was being  
9       weighed.

10               THE COURT: If there was a concern, or a  
11       question, who would you turn to?

12               THE WITNESS: If we felt there was a concern  
13       there may have been an integrity issue for evidence or  
14       comprised evidence, we would turn to the supervisor  
15       from Delaware State Police who was issuing the evidence  
16       out for examination, who then, in turn, would  
17       consistently notify someone from CIU.

18               THE COURT: I guess my question, you have been  
19       asked several times, maybe if I try. Who is in charge?  
20       Who is in charge? This is not some minor thing that is  
21       happening here. This is a major issue that is  
22       floating. You all knew it was a major issue. Attorney  
23       General's Office knew it was a major issue, your

1 employer knew. Who is in charge?

2 THE WITNESS: In charge of...

3 THE COURT: Who is in charge of the  
4 investigation?

5 THE WITNESS: The criminal investigation, I  
6 believe Lieutenant Laird.

7 THE COURT: Was he there?

8 THE WITNESS: He was at Troop 2 at times.

9 THE COURT: At times?

10 THE WITNESS: I can't account for his full  
11 time. He was not physically in the audit room while we  
12 were doing the audit consistently.

13 THE COURT: He is one individual overall in  
14 charge of the investigation.

15 THE WITNESS: Of the criminal investigation;  
16 yes, sir, to my knowledge.

17 THE COURT: Thank you.

18 BY MR. GRUBB:

19 Q. Does that refresh your recollection as to who  
20 held that meeting at the beginning; was it Lieutenant  
21 Laird?

22 A. I am sure he was present.

23 Q. At this point you don't remember who gave the

1 instructions on what to do. I don't want to retrace  
2 that thing. So we can move along.

3 Since you mentioned to His Honor Lieutenant  
4 Laird, I thought that might have triggered something.

5 My point in asking you about another auditor  
6 was this: You chose, using your judgement, that that  
7 three-and-a-half gram discrepancy was enough to cause  
8 you some concern, and say let's hold on a second?

9 A. Enough to notate.

10 Q. You notate it, fine, but with no protocols in  
11 place as to what actually constitutes a discrepancy,  
12 someone in the exact same job as you might not have  
13 made that decision?

14 A. I guess that's possible, sir.

15 Q. So getting to specific examples. You  
16 testified that what you took, as what was in the  
17 envelope, depended on what the officers put on the  
18 outside of the envelope, correct?

19 A. Correct.

20 Q. You didn't go anywhere beyond that?

21 A. Correct.

22 Q. For example, if there is no weight listed on  
23 852 bags of heroin, you didn't weigh it?

1 A. Correct.

2 Q. Your testimony is that you took it out, and  
3 counted every bag said yes, the count is okay?

4 A. Correct.

5 Q. Why not take a look at the affidavit of  
6 probable cause or the officer's initial crime report to  
7 see how many grams of heroin that 852 bags weighs?

8 A. Because that wasn't the purpose of the  
9 investigation -- audit, sir.

10 Q. Isn't the purpose of the investigation to  
11 determine if anybody stole some drugs?

12 A. Yes, sir.

13 Q. Okay.

14 A. So if they mark 852 bags of heroin is inside  
15 this envelope and I count out 852 bags of heroin, again  
16 weights are an approximation, so I would be feeling  
17 pretty confident that this bag was not compromised.

18 MR. COLLINS: May I have an item marked for  
19 identification? I don't need to admit it.

20 THE CLERK: So marked, Your Honor, Defense  
21 Identification A so marked.

22 THE COURT: Thank you.

23 BY MR. COLLINS:

1 Q. This is the affidavit of probable cause from  
2 the Dilip Nyala case. Just take an moment to read  
3 where I have highlighted, or thereabouts, let me know  
4 when you are done.

5 A. Okay.

6 Q. So if the audit team wants to be really  
7 accurate in terms of not just checking the count of  
8 something, but checking the weight of something, they  
9 could have simply referred to the affidavit of probable  
10 cause which the officer says that 852 -- it says 857,  
11 that those 857 bags weighed 17.14 grams. Right?

12 A. Okay.

13 Q. You didn't obtain that information, right?

14 A. Correct.

15 Q. You based your checkmark, this is okay solely  
16 on what the officer wrote on the envelope?

17 A. Correct.

18 Q. I hate to do this but I have to ask: Who told  
19 you that that was okay?

20 A. Again, that was handled by the supervisor from  
21 the State Police that was running, handing out the  
22 envelopes. We weren't there to go back and look at  
23 this probable case sheet on whether they filled the

1 envelope out correctly. We were there to verify the  
2 integrity of that envelope, not whether the officer  
3 properly filled it out, followed all their protocols to  
4 do that. We were there to say, here is the envelope  
5 that was submitted to the ME's Office with information  
6 that was listed on the envelope.

7           Was this envelope compromised in anyway by an  
8 outside source, and do the contents within that  
9 envelope, are they consistent with what is written on  
10 the envelope?

11           So whether their probable cause says something  
12 different, whether their police report says something  
13 different, that was not our intent nor purpose.

14           Q. Okay. Sorry to interrupt, were you done?

15           A. Done enough.

16           Q. That is very helpful information. So your  
17 standard, whoever you got it from, I'm not going to ask  
18 again, is consistent with what it says on the envelope,  
19 that's it, and the definition of "consistent with" is  
20 whatever you decide it is?

21           A. Reasonably decided.

22           Q. I am not casting aspersions and saying you  
23 made bad decisions, I'm saying you were left with total

1 discretion to decide what constituted consistent with.  
2 So your -- no protocol tells you your standard was  
3 exactly the same, or thereabouts; as far as you were  
4 concern it was consistent with?

5 A. My standard that I did for my envelopes were  
6 consistent for all envelopes that I did.

7 Q. That is all you can speak to, envelopes you  
8 did, right?

9 A. Yes, sir.

10 Q. You keep using the term approximation weight.  
11 What does that mean?

12 A. It's referring to the fact I don't know how it  
13 was weighed on the initial. Meaning that, again, drugs  
14 in most cases are packaged. So I don't know if the  
15 officer when they did their weight, whether they were  
16 including packaging weight, not including packaging  
17 weight, whether they -- how they handled their initial  
18 weight.

19 Again, when we are dealing with plant-like  
20 material such as marijuana, depending on if the  
21 marijuana was completely dried or not, there could be  
22 an issue with that, as well.

23 Q. There is marijuana in these cases, so I will

1 ask, I'm assuming you didn't have any particular  
2 standard as to what you might account for as a  
3 discrepancy due to drying versus discrepancy due to  
4 someone stole marijuana?

5 A. It was the same reasonable expectation. Is it  
6 reasonably approximated to what is in the envelope,  
7 versus what is on the scale.

8 Q. Okay.

9 I am going to turn to the individual cases  
10 that you handled. I have a few questions about those.

11 I have my highlights, those are my personal  
12 versions of State Exhibit 1. You are saying this lack  
13 of time closed was just basically scribe error?

14 A. Yes, sir.

15 Q. It did get closed, obviously, right?

16 A. Yes.

17 Q. Any idea when?

18 A. Would just be a pure guess.

19 Q. I don't want you to guess. Generally  
20 speaking, it appears from the ones of these I have seen  
21 in connection with this case, that these audits took  
22 anywhere from one to five minutes; fair to say?

23 A. Yes.

1 Q. Discrepancy, yes, no, is left blank. That is  
2 the one where you says someone didn't write it down?

3 A. Yes, sir.

4 Q. What is the correct answer?

5 A. No discrepancy.

6 Q. Item A, which is a bag count of heroin of 852,  
7 if you look at charge sequence 03 on Defendant's A for  
8 Identification, where I have highlighted there it says  
9 17.14 grams and 857 bags, close enough on bag count.  
10 This 17.14 grams you didn't know about, right?

11 A. Correct, sir.

12 Q. I am going to show you page seven of  
13 Exhibit 1, I will confess --

14 MR. COLLINS: May I confer with counsel.

15 (Discussion held off the record.)

16 BY MR. COLLINS:

17 Q. I am using, with State's consent, my  
18 highlighted version. If you see there, you have never  
19 seen this before, right, this is NMS labs drug result  
20 in this case.

21 A. Correct.

22 Q. Have you ever seen it?

23 A. No, sir.

1 Q. Let me orient, 1A, 1A, 1B, 1C, 852 bags of  
2 heroin are in the 1A, stamped seaweed, three little  
3 bags of heroin, are 1B, two little bags of heroin are  
4 1C, thereby adding up to 857 bags, okay?

5 A. Okay.

6 Q. Now, adding together 4.92 grams, plus .01,  
7 plus .01, I come up with, you can verify if I am right  
8 or wrong 4.94 grams of heroin?

9 A. I'll take your word for it.

10 Q. And that is pretty a significant variant to  
11 the 17.14 grams?

12 MR. GRUBB: Your Honor, may we approach?

13 THE COURT: Sure.

14 (Discussion held off the record.)

15 (The following sidebar conference was held.)

16 MR. GRUBB: Your Honor, I am objecting to the  
17 line of questioning with respect to the weight of  
18 heroin in this particular case is irrelevant --  
19 misplaced for witness Taylor. He has already testified  
20 he did not weigh anything. He did not ever review the  
21 affidavit of probable cause, did not ever review the  
22 NMS report. Clearly any weight discrepancies that  
23 exist Mr. Collins and Mr. Roop can, should, and will

1 highlight in argument to the Court as to why the drugs  
2 are not reliable. Any questions to Mr. Taylor at this  
3 point would not be fruitful. He testified he never  
4 weighed anything. I understand if there was a jury  
5 here, we are making argument through the witness,  
6 knowing that he has no knowledge whatsoever about the  
7 weights, which appear to be more appropriate for  
8 argument to the Court.

9 MR. COLLINS: I agree. I do plan to argue to  
10 the Court. I can make the record a different way to do  
11 it would be the cop who arrested him, bring in someone  
12 from NMS, turn this into another very long hearing.  
13 I'm just trying to get the weights, in essence,  
14 admitted into evidence through this witness. He is  
15 going to say he does not know. I am going to say that  
16 is fine, we all move on. There is other batches where  
17 there was weights listed. I am going to ask him about  
18 the variances there. I thought the efficient way to  
19 get in the transcript just to do that. If the Court  
20 wants to do it another way, we can do it another way.

21 THE COURT: I will let you do it.

22 (Sidebar conference concluded.)

23 BY MR. COLLINS:

1           Q. Moving onto 1D and E, this NMS language, again  
2 appreciating you have never seen this report, you are  
3 not responsible for it. I'm just asking you 1D and E  
4 is the marijuana, which according to Defendant's A for  
5 Identification, under the charge sequence is 66 grams.  
6 I appreciate you are not responsible for the police  
7 officer, either, and what the weight was. You would  
8 agree that the police officer did weigh this evidence,  
9 right?

10           A. Absolutely. Yes, sir.

11           Q. Going back to page six of Exhibit 1, according  
12 to NMS, the weight is 52.96 grams, as opposed to 66  
13 that is listed in the probable cause affidavit. The  
14 question for you, if you had gotten an envelope, and  
15 that it said 66 grams on it, and it only weighed 52.96  
16 grams, would it have caused you, would that have raised  
17 a flag for you in terms of a discrepancy?

18           A. Yes, sir.

19           MR. GRUBB: Clarify which drug was are talking  
20 about?

21           BY MR. COLLINS:

22           Q. That was marijuana I was just referencing.

23                       Lastly, this is one you did weigh, talking

1 about the what you have termed baggy of crack that  
2 weight 44.5 grams, according to Exhibit 1, page six; do  
3 you recall that?

4 A. Yes, sir.

5 Q. So you wrote, the envelope lists 48 grams,  
6 baggy of crack weighs 44.5 grams, NMS says, under line  
7 F1 and 1F2 and 1F3, if I'm not mistaken, total is  
8 41.87 grams. That number differs both from the police  
9 weight and from the audit weight, and NMS came up with  
10 a different weight, would you agree?

11 A. Yes, sir.

12 Q. Okay.

13 I want to ask you a question about scales.  
14 Why were the scales not calibrated? You are about to  
15 undertake the biggest audit in the history of Delaware,  
16 right, big scandal going on, why not make sure  
17 everything is perfect before you start?

18 A. I can't answer that question, sir.

19 Q. Move on to other evidence. At this point I am  
20 in State's Exhibit 2, on page six. This is as pertains  
21 to the Irwin case.

22 MR. COLLINS: May I have a moment, Your Honor.

23 THE COURT: Yes.

1 (Discussion held off the record.)

2 BY MR. COLLINS:

3 Q. What I am showing you is the back of State's  
4 Exhibit -- that is State's Exhibit 14, back of an  
5 envelope which you have already seen. That is 25.3  
6 grams of ecstasy, right?

7 A. Yes.

8 Q. You are basing your analysis on what is  
9 written on the back of the envelope, right, that is  
10 your baseline starting point?

11 A. Front of the envelope would be the baseline.

12 Q. Sure, that says what the evidence is. For the  
13 record, that is State's 13. I misspoke, what I meant  
14 to say was in terms of weight, something weighs or what  
15 have you, it is this 25.3, it is on both the front and  
16 back, right?

17 A. Yes, sir.

18 Q. So I should ask you about State's 13. Your  
19 information comes off of this envelope, and you are  
20 taking what the police officer has written as your  
21 baseline?

22 A. Yes, sir.

23 Q. Sorry for the confusion on my part.

1           Now, this is purportedly a bag of ecstasy,  
2 crystal solid material, would you agree with that?

3           A. Crystal solid material.

4           Q. Thank you.

5           According to Exhibit 2, page seven, which is  
6 the NMS report for this portion of the Michael Irwin  
7 case anyway, their weight is 24.16 grams. Question:  
8 With respect to the weight, if you had 25.3 on an  
9 envelope, you weighed it at 24.16 grams, would that  
10 have raised a discrepancy flag for you?

11          A. No, sir.

12          Q. You would have let that go?

13          A. Would have been marked as no discrepancy. I  
14 have a question; what I am not seeing in these  
15 documents that you are showing me is how did they weigh  
16 these items meaning that this was contained in a  
17 glassine bag of some sort. Did they remove the baggies  
18 to do the weights?

19          Q. All good questions.

20          A. That is why I am asking, this weight  
21 difference, that can make a difference, would make a  
22 difference.

23          Q. Sure, I mean, there is a lot of things that

1 could make a difference. For example, scales, you  
2 know, whatever scales used, I appreciate that. Do you  
3 agree it would have at least been better to start with  
4 calibrated scales?

5 A. Absolutely, sir.

6 Q. Then NMS, I understand is not your  
7 responsibility, whatever they did they did. I was just  
8 asking you for purposes of this case, if you had seen  
9 24.16 on your scale versus 25.3 that Russo wrote on the  
10 envelope, would you have flagged it?

11 A. No, sir.

12 Q. Close enough.

13 A. Within a reasonable approximation.

14 Q. Whereas 4.5 versus 48 grams in the Mr. Nyala's  
15 case, that was enough to cause you to flag it?

16 A. Didn't flag it as a discrepancy, we just made  
17 a note that it was down as not a discrepancy, but it  
18 was a notable difference.

19 Q. Thank you for correcting me.

20 Now, that leads me to a question: When you  
21 had said -- let me get back to the right page. This is  
22 page six of Exhibit 2, it is the 25.3 grams we have  
23 been discussing, it is your form?

1 A. That was the form that was being used.

2 Q. So you have this thing open for a minute. In  
3 that time, you weighed it, right?

4 A. Yes, sir.

5 Q. And you're comparing it to 25.3 grams?

6 A. Yes, sir.

7 Q. What did it actually weigh?

8 A. It weighed within that approximation of 25.3.

9 Q. Okay. I think what your answer is telling me  
10 that rather than just writing down the weight, you just  
11 made a judgement call after looking at the scale and  
12 put it back in the bag, in the envelope?

13 A. We would only write -- make a notation if it  
14 was a weight that, again, was notable in the sense of  
15 like three-and-a-half grams we talked about before.

16 Q. Would it not have been preferable to write  
17 down every weight of every single sample that you  
18 weighed, at least it is on the form?

19 A. Again, we are using scales that we don't  
20 know -- we are not using the same scales used  
21 originally. As long as it was a reasonable  
22 approximation, with were not writing down weights.

23 MR. COLLINS: Thank you.

## 1 REDIRECT EXAMINATION

2 BY MR. GRUBB:

3 Q. I will just ask you, Mr. Taylor, when you were  
4 at Troop 2 conducting your audit, was there always  
5 someone in charge?

6 A. Yes, sir.

7 Q. Were you always aware who that person was?

8 A. Yes, sir.

9 Q. Whether it be Lieutenant Laird, correct, at  
10 times?11 A. He would have brought in the evidence for the  
12 audit teams. It was one of three.

13 Q. Give us those three?

14 A. Sergeant Scott McCarthy, Sergeant Andrew  
15 Lloyd, and Sergeant Matt Taylor. They were the three  
16 ones handling the actual evidence envelopes.17 Q. They would vary, depending on schedule who  
18 would be there?

19 A. Yes.

20 Q. Whoever is in charge, whichever one of those  
21 three would that be person that if a discrepancy was  
22 noted, you would go report it to?

23 A. Yes, sir.

1 MR. GRUBB: No further questions, Your Honor.

2 MR. COLLINS: That does not prompt any.

3 THE COURT: Let's take a break. Who is your  
4 next witness?

5 MR. GRUBB: One more witness, it is Corporal  
6 Maiura, the other audit member for the other audit  
7 forms that we have. I intend to not ask him a lot of  
8 the same questions I asked Mr. Taylor. Defense may,  
9 but I intend to be brief with him.

10 THE COURT: We are going to try put someone  
11 on. Him or her.

12 MR. COLLINS: Lieutenant Laird is scheduled, I  
13 assume he is probably here.

14 MR. GRUBB: He is, Your Honor.

15 MR. COLLINS: I guess we will see where we  
16 land tomorrow. I plan to be fairly brief with Mr.  
17 Bono, the expert. If we wanted to do Detective Laird  
18 in the morning, that is fine. I guess we will see  
19 where we are. The court can let us know.

20 MR. GRUBB: If we have time, Your Honor, the  
21 State's desire is going -- we defer to the Court.  
22 Lieutenant Laird is here, he has been here this  
23 afternoon. If we have time, I would very much prefer

1 to put him on the stand and get done with him.

2 THE COURT: We will see how it goes.

3 (A short recess was taken.)

4 MR. GRUBB: State calls Thomas Maiura.

5 THOMAS MAIURA,

6 having been first called by the State was sworn on  
7 oath, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GRUBB:

10 Q. Good afternoon, sir.

11 A. Good afternoon.

12 Q. Are you a police officer?

13 A. Yes, I am.

14 Q. Which police agency do you work for?

15 A. Newark Police.

16 Q. How long have you been a Newark Police  
17 officer?

18 A. Twenty-four years.

19 Q. Late February, early March of 2014, were you  
20 assigned to, what I will term, participate in the audit  
21 over at Troop 2 for the Delaware State Police?

22 A. Yes.

23 Q. I will specifically direct you to State's

1 Exhibit 3, page five; are you able to see this?

2 A. Yes.

3 Q. Is this the form that the audit team members,  
4 yourself included, were expected to use in documenting  
5 what you were doing for the audit?

6 A. Yes.

7 Q. On this form we see inspected by. Do we see  
8 your name?

9 A. Yes.

10 Q. Next to it there is a slash, I believe the  
11 initials SP; is that correct?

12 A. Yes.

13 Q. Are you familiar with what SP stands for?

14 A. Yes.

15 Q. What would that be?

16 A. Seth Polk.

17 Q. He is an officer with the New Castle County  
18 Police?

19 A. Yes.

20 Q. You two were paired up as a team; is that  
21 correct?

22 A. On that day, yes.

23 Q. On that day being February 28, 2014, right?

1 A. Yes.

2 Q. On this form, page five, we have a time opened  
3 date, and a time closed date, right?

4 A. Yes.

5 Q. We have learned that of the two-person audit  
6 team, one person was designated to be the scribe. Are  
7 you able to tell from the handwriting, or from memory,  
8 as to who the scribe for this particular form would be?

9 A. Seth Polk was the scribe.

10 Q. So, in other words, these notations are from  
11 Seth, right?

12 A. Yes.

13 Q. What would your role be in evaluating this  
14 case, with the complaint number and the FE number noted  
15 on it?

16 A. I would be the one that handled the envelope,  
17 and did the verification as to what was in it, versus  
18 what is written on it.

19 Q. Tell us, if you could, when you handle the  
20 envelope, what do you look for with respect to evidence  
21 of tampering or imperfections?

22 A. Some of the things we would look for, tape  
23 that is on it intact, or peeled back, or cuts in the

1 envelope in any location, are there different tapes  
2 used on it. They would be some of the indications.

3 Q. If you saw any of those indications, would you  
4 note it?

5 A. Yes.

6 Q. Would the absence of any such note indicate  
7 that you did not see such discrepancies or  
8 imperfections?

9 A. Correct.

10 Q. With respect to the actual contents of the  
11 drug envelope, walk us through what you do?

12 A. You find a location on the envelope that is  
13 not taped in anyway, there is no cuts. You cut that  
14 location, you take out the contents, examine them, and  
15 check to see that the contents are matching what is on  
16 the envelope written as the contents.

17 Q. You would check for both, depending on the  
18 drug, quantity and/or weight; is that accurate?

19 A. Yes.

20 Q. I will put on the screen State's Exhibit 15  
21 and represent to you it has the same FE complaint  
22 numbers as the previous document we showed you. Is  
23 that the type of evidence envelope that would come your

1 way for you to inspect and audit?

2 A. Yes.

3 Q. I will show you State's Exhibit 16 and  
4 represent to you it is the back of that evidence  
5 envelope. What can you tell us about this photograph?

6 A. That there's -- where I am touching, those  
7 were tape locations that were already in place.

8 Q. That was already there when it came to you?

9 A. That was there when it came to me taped at the  
10 bottom, down toward the end closest to the last arrow  
11 is where I cut and resealed.

12 Q. Where did you get the evidence tape to do  
13 that?

14 A. From Troop 2, we were in their evidence room.

15 Q. Any markings near the evidence tape that you  
16 yourself put on that envelope that you can speak to for  
17 us?

18 A. Yes, my initials and date.

19 Q. Is that common, would that be protocol for you  
20 to initial and date wherever you open by the tape?

21 A. Yes, it is halfway on the tape, halfway on the  
22 envelope that's opened. Anyone trying to mess with it  
23 has to realign, it's very, very difficult.

1 Q. That was intentional?

2 A. Yes.

3 Q. A security measure?

4 A. Yes.

5 Q. On your audit form, we see A comma B; is that  
6 accurate, sir?

7 A. Yes.

8 Q. What does that mean?

9 A. Means that the Medical Examiner's case, I  
10 guess forensic -- not sure what their FE means, it was  
11 a '13 case, last year. Their case number, but A and B  
12 means there is two packages associated with that one  
13 case, Medical Examiner's case.

14 Q. We just looked at the one, it had an A on it,  
15 I will put it on the screen. State's Exhibit 17, does  
16 this one have a B on it?

17 A. Yes.

18 Q. Could you indicate, please, by touching the  
19 screen where the B is?

20 A. One just above the number, next would be up  
21 above.

22 Q. Are you able to tell us where on this evidence  
23 envelope you cut into it to verify its contents?

1           A. That would be the bottom of your screen where  
2 it is indicated.

3           Q. There appear to be markings in black marker on  
4 or under the blue evidence tape that you just pointed  
5 to. Can you tell us what these markings are?

6           A. Again, my initials TGM and the date.

7           Q. Does that indicate you inspected those two  
8 envelopes, A and B?

9           A. Yes.

10          Q. On the form where it asks discrepancy; what  
11 did you indicate?

12          A. Well, again, this would have been Seth Polk,  
13 who is sitting right next to me.

14          Q. I apologize.

15                 What did the audit team indicate?

16          A. No.

17          Q. In the comment section we have the complaint  
18 number?

19          A. Correct.

20          Q. If there was a discrepancy that the team  
21 noted, would it have been written in the comments  
22 section?

23          A. Yes.

1 Q. Direct your attention to a separate case,  
2 State's Exhibit 4, page five. Are you able to tell us  
3 what we are looking at here, Corporal?

4 A. Another audit sheet, Troop 6 origin, complaint  
5 and it's been assigned a Medical Examiner's case  
6 number.

7 Q. That is your name again with initials SP,  
8 right?

9 A. Yes.

10 Q. That is you and Seth Polk, again, as a team,  
11 February 28th, correct?

12 A. Yes.

13 Q. You note on the form it is noted time opened  
14 and time closed, correct?

15 A. Yes.

16 Q. Is that with respect to the evidence envelope?

17 A. Yes.

18 Q. I will show you State's Exhibit 11, and  
19 indicate to you that the FE number, and the complaint  
20 number match to the previous form that you were shown?

21 A. Yes.

22 Q. We will show you State's Exhibit 12, which I  
23 will represent to you is the back of the evidence

1 envelope depicted in State's 11. What can you tell us  
2 about this photograph?

3 A. The tape that was in place when I received it,  
4 the bottom which indicates that is tape I put on there,  
5 for me to reseal it after it was opened, and it is  
6 initialled and dated with my initials.

7 Q. Turn back to the audit form for that evidence  
8 envelope where it asks if there is a discrepancy. What  
9 does the form say?

10 A. The form says no.

11 Q. The comment section, other than the complaint  
12 number, anything listed?

13 A. No.

14 Q. Why would that be?

15 A. There were no discrepancies found.

16 MR. GRUBB: Thank you. No other questions.

17 CROSS EXAMINATION

18 BY MR. COLLINS:

19 Q. You have any independent recollection of these  
20 cases?

21 A. This particular case, no.

22 Q. I will start by showing you State's  
23 Exhibit 16, which was up on the screen previously.

1 Would you agree that says 30.9 grams of marijuana?

2 A. Yes.

3 Q. Suspected marijuana, whatever you want to call  
4 it.

5 Sometimes denoted as PM, Plant Material.

6 Weight was 30.9 grams, right?

7 A. That is what is indicated.

8 Q. Does that form the baseline for your audit of  
9 that item of evidence?

10 A. Typically we went off the front, but this is  
11 here --

12 Q. I didn't show you the front --

13 A. -- put consideration in.

14 Q. I didn't show you the front. State's 15 does  
15 not appear to have any weight on the front?

16 A. Yes, it says marijuana on it.

17 Q. Let me ask you this, 30.9, was that something  
18 that you wrote on there, or did you receive it that  
19 way?

20 A. I received it that way.

21 Q. What did the marijuana actually weigh?

22 A. I don't recall exactly.

23 Q. What tolerance ranges did you use to determine

1 if something was a discrepancy or not?

2 A. It wasn't a set tolerance, it was basically if  
3 you are looking at marijuana, you have a measurement,  
4 and you are basically using your years of experience to  
5 say alright, is there a bag associated with this? Did  
6 they weigh the bag? Take it out of the bag? If there  
7 is any discrepancy is it something that can be counted  
8 off of a slight difference in the scale, tenth of a  
9 gram, a gram? Are we talking, like, looking at  
10 15 grams, then you have an issue because half of it is  
11 missing, you know, something of that nature.

12 If you see a difference, is there -- was there  
13 something unusual about the envelope, you know, again  
14 go back to that. None of those things were evidenced  
15 here.

16 Q. It sounds like what you are saying is that you  
17 are making judgement calls based on your experience  
18 working with drug evidence, right?

19 A. What is reasonable in what you are observing.

20 Q. You are making decisions as to what is  
21 reasonable to expect?

22 A. Yes.

23 Q. And your discretion -- your levels of

1 tolerance are not for a weight being over or under what  
2 is written on the envelope, is not based on a protocol  
3 of hey, it is five percent off. I am going to flag it,  
4 or ten percent, it is more based on your own personal  
5 guidelines based on your experience; would that be a  
6 fair thing to say?

7 A. Basically based on your experience, yes.  
8 Marijuana might dry up, and you are going to see some  
9 discrepancy there, where a pill is not going to dry up.  
10 You may have something based on that, or so on. Like I  
11 say, if it seems something off what you are used to  
12 seeing, then you call attention to it, or you may mark  
13 it as a discrepancy, even if it can't be explained as a  
14 criminal matter, versus a drying matter, or a packaging  
15 matter.

16 Q. Did you have your decision-making framework  
17 that you have just described approved by a supervisor?

18 A. There is a supervisor directly in front of us  
19 when we are doing this. So there is a sergeant right  
20 there, and your scribe is kind of right there seeing  
21 everything, as well. Anything that you look at say,  
22 all right, let's see what this is about.

23 There is three different people that are with

1       you; you, your partner, and a sergeant that is directly  
2       right there that all see what is going on.

3             Q.   The sergeant you are referring to is typically  
4       Sergeant McCarthy?

5             A.   McCarthy was most common.  There was also  
6       Sergeant Taylor.

7             Q.   Turning now to page six of Exhibit 3.  I will  
8       represent to you that this is the NMS labs result from  
9       this case being sent to NMS labs.  I will further  
10      represent to you the highlighting and handwriting is  
11      mine on there just to expedite things.  I would like  
12      you to take a moment, the items designated 1A and 1B.  
13      They are botanical material, according to NMS, which I  
14      guess is kind of a nomenclature for suspected  
15      marijuana?

16            A.   Yes.

17            Q.   Did you see anywhere else on NMS where they  
18      are adding up weights of any other suspected marijuana?

19            A.   Adding it?

20            Q.   It appears they have an apparent plastic bag  
21      and a manila envelope with blue evidence tape  
22      containing two separate containers of suspected  
23      marijuana?

1 A. Yes.

2 Q. This other item which is identified as item  
3 two, totally separate deal, that is what you called --  
4 well, what the lab called the B sample, which is  
5 suspected ecstasy. I would like to draw your attention  
6 to the two line item entries indicating botanical  
7 material.

8 Would you agree with me that my math is  
9 correct, the weight of these two evidentiary subsamples  
10 added together equals 16.01 grams?

11 A. Yes.

12 Q. Would you further agree that is a far cry from  
13 30.9 grams, which was written on the back of the  
14 envelope?

15 A. Depending. Yes, if you are looking just in  
16 that.

17 Q. Okay.

18 Let me ask it a better way: If you had an  
19 envelope has says 30.9 grams on it, you put it on your  
20 scale in the audit room, and it came out to 16.01,  
21 would you have identified that as a discrepancy or  
22 non-discrepancy?

23 A. Came up with 16.01? Do we know how it was

1 weighed is what I would be asking. Would I look again  
2 at the envelope, probably. Would there be a  
3 discrepancy that we note...

4 THE COURT: I think you are confused. Let me  
5 make sure. If you had the envelope, opened it up, you  
6 weighed the marijuana at the audit office at Troop 2,  
7 and it weighed 16.01. You saw on the envelope it  
8 weighed 35, whatever the number is. Would you --  
9 forget about the lab, would you have said that is a  
10 sufficient discrepancy to note it as a discrepancy?

11 THE WITNESS: If we can't explain it, we may  
12 make a notation about it. It is talking, this may be  
13 enough to say this is a packaging weight issue or not.  
14 It may not be any audit or any indication felt it is  
15 not explainable.

16 BY MR. COLLINS:

17 Q. With the Court's clarification, I'm not  
18 talking about NMS right now, I'm pitching you a  
19 hypothetical.

20 A. Yes.

21 Q. The envelope says -- let me just finish the  
22 question. The envelope says 30.9. Your scale says  
23 16.01. I'm bad at math, that is about half of the

1 weight, little over half of the weight. Is it your  
2 testimony that it could be explainable and would not  
3 amount to a discrepancy, according to your  
4 decision-making process?

5 A. It could be. It's going to be right in the  
6 kind of fine line in that.

7 Q. Fine line?

8 A. There's two packages in there is what this is  
9 telling me, correct?

10 Q. What it appears to say. You didn't testify  
11 that that was the case when you were looking at the  
12 envelope evidence, but I appreciate that, you know, you  
13 don't have a specific recollection of auditing this  
14 particular case. I am not expecting you to.

15 But your answer is; you believe that based on  
16 your own decision logic that could be explained?

17 A. If I am looking at packaging material, that  
18 looks look like it could add up to that, yes.

19 MR. COLLINS: May I have a moment, Your Honor?

20 (Discussion held off the record.)

21 BY MR. COLLINS:

22 Q. I will take you through the similar exercise  
23 with the other sample which I will show you from the

1 back, quickly, of State's Exhibit 18. This is  
2 suspected ecstasy, written on there 2.3 grams of MDMA?

3 A. Yes.

4 Q. This ecstasy comes in kind of a crystalline  
5 block, would that be fair to say?

6 A. Ecstasy can be in pill form, sometimes it is  
7 in like a grinded salt.

8 Q. NMS says yellow crystalline material; does  
9 that sound reasonable to you?

10 A. Yes.

11 Q. Same question, NMS weight came up to two grams  
12 as opposed to 2.3 that the officer submitted as a  
13 weight. I probably know the answer to this based on  
14 your previous answers; would this have caused you to  
15 declare a discrepancy?

16 A. 2.3?

17 Q. Versus two?

18 A. No.

19 Q. You don't have a recollection, I appreciate  
20 that, having not written down weight simply just  
21 circling no discrepancy, you don't know what audit  
22 team's weight of any of these drugs were, right?

23 A. Audit team?

1 Q. You?

2 A. Me?

3 Q. As an auditor, you didn't write down weights.  
4 So there is no way to recall or record what the weights  
5 were?

6 A. No. I can tell you this time we used a triple  
7 beam scale. You are looking at, you know, talking .3,  
8 talking about little yellow lines positioning -- exact  
9 positioning of that little arrow.

10 Q. You guys didn't have digital scales?

11 A. Some did, some did not. I was using a triple  
12 beam scale most of the time. Basically, very, very  
13 close but .3, not necessarily so fine.

14 MR. COLLINS: That's all I have.

15 MR. GRUBB: No questions, Your Honor.

16 THE COURT: Corporal, were you involved from  
17 the very beginning in doing the audit, or were you  
18 brought in once the audit had already begun?

19 THE WITNESS: I was brought in once it had  
20 begun.

21 THE COURT: Do you know how many, what time  
22 frame that would have been, how long they had been  
23 doing the audit already?

1 THE WITNESS: Approximately a week, not  
2 exactly sure, approximately a week.

3 THE COURT: Thank you. You my step down.

4 MR. GRUBB: I have no more witnesses.

5 MR. COLLINS: Can we do Lieutenant Laird, Your  
6 Honor? I would call Lieutenant Laird then.

7 JOHN LAIRD, JR.,

8 having been first called by the Defense was sworn  
9 on oath, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. COLLINS:

12 Q. Good afternoon, you are a lieutenant, right?

13 A. Yes.

14 Q. Good afternoon. Where are you currently  
15 employed?

16 A. Delaware State Police, assigned to Troop 2  
17 Criminal Investigations Unit.

18 Q. How long have you been there?

19 A. 18 months.

20 Q. How long have you been a police officer?

21 A. Approximately 15 years.

22 Q. Where did you work before this?

23 A. Before Delaware State Police or before my time

1 at Troop 2?

2 Q. Both. Where did you work before Delaware  
3 State Police?

4 A. I was a college graduate.

5 Q. So you have been pretty much your whole career  
6 a police officer?

7 A. Correct.

8 Q. Have you been with the Delaware State Police  
9 the whole time?

10 A. Correct.

11 Q. This last 18 months you have been with CIU?

12 A. Correct.

13 Q. What are your current primary job  
14 responsibilities?

15 A. I oversee -- I am a deputy troop commander of  
16 the Criminal Investigations Unit, that entails  
17 supervision of five units, that includes all school  
18 resources officers, youth aide division, New Castle  
19 County drug unit, Governor's task force and the  
20 state-wide drug diversion team.

21 Q. I am asking you questions today about an  
22 investigation which I believe can be best identified by  
23 your complaint number which is 02-14-014033, that

1       resulted so far in the arrest of James Woodson and  
2       Farnam Daneshgar. Are you familiar with that  
3       investigation?

4             A. Yes.

5             Q. What is your role in that investigation?

6             A. I am the lead investigator.

7             Q. We sometimes use the term CIO, Chief  
8       Investigative Officer, are you that person?

9             A. Correct.

10            Q. For this case?

11            A. Correct.

12            Q. How did you get that job?

13            A. When the Delaware State Police learned of the  
14       discrepancies, and the Colonel, in conversation with  
15       the Homeland Security Secretary, and they decided that  
16       it would be handled by Troop 2 CIU, that investigation  
17       was assigned to me.

18            Q. If you recall about when did you undertake the  
19       investigation?

20            A. Would have been February 20, 2014.

21            Q. So that was a big day, not only did the  
22       investigation start, that's when you guys went in and  
23       locked the vault, all that stuff, right?

1 A. Correct.

2 Q. I am assuming that you had quite a team  
3 working with you in connection with this investigation?

4 A. Yes.

5 Q. Approximately how many officers are part of  
6 the investigative team on this case?

7 A. Throughout from the beginning there has been  
8 at least four investigators assigned full-time. And  
9 there's been other times where there has been more.

10 Q. Now, there's been significant testimony so far  
11 in this hearing, I am going to make every effort not to  
12 duplicate previous testimony, but in terms of the scope  
13 of your role, it will save me a lot of questions if I  
14 ask you about this audit that took place in which all  
15 the evidence was handed over to DSP for a specific  
16 audit of each item; are you familiar with that audit?

17 A. Yes.

18 Q. Were you in charge of that audit?

19 A. I was in charge of the overall investigation,  
20 which did include the audit. However, I was not  
21 involved in the daily operations of the audit. That  
22 would have been Sergeants McCarthy, Taylor and Lloyd  
23 who oversaw the daily operations of the audit.

1 Q. I'm not familiar with Lloyd, where is he from?

2 A. Troop 2.

3 Q. So that is kind of a separate subpart of your  
4 investigation; is that fair to say?

5 A. Correct.

6 Q. With respect to this investigation, has that  
7 concluded?

8 A. The criminal part?

9 Q. Yes.

10 A. Still ongoing.

11 Q. Describe what you have done so far to gather  
12 evidence in your investigation, I'm asking that in a  
13 specific way to not talk about necessarily specific  
14 evidence, but what sort of activities have you  
15 undertaken?

16 A. A lot of --

17 MR. GRUBB: I apologize, can we approach  
18 briefly on that.

19 (Discussion held off the record.)

20 (The following sidebar conference was held.)

21 MR. GRUBB: Your Honor, I am requesting that  
22 if defense counsel could add to the questions about the  
23 investigation, with respect to the controlled substance

1 unit. The reason being, Lieutenant Laird has the  
2 dubious distinction of being the Chief Investigative  
3 Officer for not only the controlled substance unit  
4 investigation, but the ongoing investigation into  
5 Dr. Callery, and without narrowing it, the question  
6 that you asked may be more broad than was intended or  
7 perhaps was not intended.

8 MR. COLLINS: I just want the answer to be  
9 well, I took some statements.

10 MR. GRUBB: Again, the reason I bring it up,  
11 is we have done a tremendous amount for that Callery  
12 investigation, that I don't know that you were looking  
13 for, I didn't want him to get into that.

14 MR. COLLINS: My only intention was to  
15 establish he was normally in charge. Otherwise, I am  
16 not going to ask him about Callery.

17 THE COURT: Tell me what -- I am losing a  
18 little bit of the relevancy of the overall  
19 investigation.

20 MR. COLLINS: This witness is to establish as  
21 an augmentation to the DOJ report, what the conditions  
22 were in the lab and with certain individuals in the lab  
23 in order to help us meet our burden of proof that the

1 conditions there were so egregious that evidence cannot  
2 be trusted.

3 It is a separate prong of our argument than  
4 the chain of custody prong. So rather than put on a  
5 dog and pony show of six, seven, eight witnesses from  
6 the actual OCME lab, conferring with Mr. Grubb, we  
7 decided we would put Laird on as my witness in order to  
8 establish some things that he found which go a little  
9 beyond what is in the preliminary report by the DOJ,  
10 not in terms of subject matter, in terms of detail.

11 In other words, this is how I make a record  
12 about the egregious critical mess in the lab.

13 THE COURT: I guess my concern is that if you  
14 are not precise in the question, you kind of -- because  
15 you are not trying to lead him, you are going to open  
16 up things that you are not intending to open up, or so  
17 if you want to ask him were all the employees of the  
18 lab interviewed? Were statements taken from them? If  
19 you want to lead him in some things, I prefer that.  
20 Can you tell me generally what you have done, I am not  
21 sure where that leads us.

22 MR. COLLINS: It will make things a lot  
23 better, can I lead him through the whole thing?

1           THE COURT: That would be preferable.  
2           Otherwise, he will not necessarily know where you are  
3           wanting. If you can lead him through what you would  
4           like him to say, ask him what he found, whatever he  
5           found, I think that would be more appropriate. As far  
6           as Dr. Callery, if you want to ask him, I assume, I  
7           don't know if he has been interviewed or has been  
8           represented. I don't know what the status is. If you  
9           want to generally, I have to hear the question.

10           MR. COLLINS: I am going to be general. I  
11           will lead him through this. We will get done. If  
12           there is a concern, I am sure Mr. Grubb will raise it  
13           or the Court.

14           THE COURT: Try doing it that way. What you  
15           are intending, he is not going to quite understand. He  
16           is going to start saying some stuff, Mr. Grubb, you  
17           don't particularly want.

18           (Sidebar conference concluded.)

19           BY MR. COLLINS:

20           Q. I don't think my question was specific enough.  
21           The other investigation that you have begun,  
22           specifically referring to what has been called in this  
23           hearing the CSU at OCME, that is Controlled Substance

1 Unit?

2 A. Lab, yes.

3 Q. I am asking you questions about that  
4 investigation, primarily, anyway. So I was, before we  
5 went to sidebar, asking you about how you conducted  
6 your investigation, generally speaking. My  
7 understanding is that you took witness statements,  
8 right?

9 A. Correct.

10 Q. Is it fair to say that you interviewed just  
11 about everyone who worked at the OCME lab?

12 A. In the controlled substance lab, I wouldn't  
13 say the entire --

14 Q. I am going to try to remember to say CSU, but  
15 yes?

16 A. Okay.

17 Q. Did you interview -- I will tell you who I  
18 have interviews from; Patricia Phillips?

19 A. Yes.

20 Q. Kelly Georgi?

21 A. Yes.

22 Q. Laura Nichols?

23 A. Yes.

1 Q. Farnam Daneshgar a couple times?

2 A. Yes.

3 Q. James Woodson a couple times?

4 A. Yes.

5 Q. Aretha Bailey?

6 A. Yes.

7 Q. So one way you gathered information was by  
8 interviewing individuals, right?

9 A. Correct.

10 Q. Did you also tour the lab and make note of  
11 security arrangements, or lack of arrangements at the  
12 CSU lab?

13 A. Yes, on February 20th.

14 Q. And did you make it your business to learn  
15 further about how evidence was secured and stored and  
16 kept?

17 A. Correct.

18 Q. I want to ask you about some personnel,  
19 stepping outside CSU for a second, to the overall  
20 leadership of the Office of the Chief Medical Examiner,  
21 that would be doctor -- until recently, Dr. Callery,  
22 correct?

23 A. Correct.

1           Q. He wasn't really a factor in the day-to-day  
2 operation of CSU, was he?

3           A. He was not.

4           Q. Would it be fair to say he delegated that to  
5 other individuals?

6           A. That is correct.

7           Q. Now, speaking of other individuals, it appears  
8 from an organizational chart which the State provided  
9 to me that Hal Brown was a deputy director over, among  
10 other things, the CSU lab?

11          A. Correct.

12          Q. Was Hal Brown involved in the day-to-day  
13 operations of the controlled substance lab?

14          A. I wouldn't say day-to-day. He was clearly  
15 deputy director. He supervised. The laboratory  
16 manager who oversaw the day-to-day operations.

17          Q. I get the gist from reviewing witness  
18 statements provided to me that sometimes employees went  
19 to Hal Brown and he basically deferred things back to  
20 the laboratory manager, would that be a fair  
21 characterization?

22          A. Yes.

23          Q. Now, my understanding is that during the

1 relevant period of your investigation, which would be  
2 somewhere in 2010, up until February 20, 2014, there  
3 were a couple different laboratory managers; is that  
4 fair to say?

5 A. Correct.

6 Q. Lab manager CSU, at most of the times during  
7 the relevant period, specifically the periods relative  
8 to the Fall of 2013, when Mr. Nyala and Mr. Irwin's  
9 evidence was stored, the laboratory manager was a woman  
10 named Caroline Honse; do I have that right?

11 A. H-O-N-S-E.

12 Q. Thank you. Would you agree with me she was,  
13 generally speaking, then?

14 A. Until November, October, November, 2013.

15 Q. What happened to her?

16 A. She left. She retired.

17 Q. I am going to ask you some things about her,  
18 some of which pertain -- I need to stop for a second.

19 Are you familiar with the preliminary report  
20 issued by Delaware Department of Justice in this case?

21 A. Yes.

22 Q. From this report, and from reviewing witness  
23 statements, it's fairly clear she wasn't very competent

1 as a manager, would you agree?

2 A. I would agree.

3 Q. She was not well liked?

4 A. Correct.

5 Q. That she definitely played favorites,  
6 particularly with Aretha Bailey, right?

7 A. Yes.

8 Q. And if people complained to her, they would,  
9 as one witness I forget who put it, incur her wrath?

10 A. Correct.

11 Q. You have also learned in the course of your  
12 investigation that for whatever reason, Caroline Honse  
13 kept evidence boxes in her office, right?

14 A. We took witness statements that said that. We  
15 never saw that first hand.

16 Q. Understood. To be fair, some of the witness  
17 statements intimated, at least, that some of it was for  
18 training purposes, things like that?

19 A. Correct.

20 Q. Then some witness statements did not say that?

21 A. Right.

22 Q. Did you ever develop an understanding of why  
23 Caroline Honse took such good care of Aretha Bailey to

1 the exclusion of our employees?

2 A. It was described to us throughout the  
3 investigation as being a very odd relationship.

4 Q. Okay.

5 A. Why, we don't know.

6 Q. Some employees indicate that Caroline Honse  
7 missed all kinds of work time because she had some  
8 personal health issues going on; is that right?

9 A. Correct.

10 Q. Her retirement, to your understanding, was  
11 partly due to some health problems she was having?

12 A. Partly.

13 Q. In Caroline Honse's absence, was there a de  
14 facto person who was in charge of the lab, CSU?

15 A. She was the only lab manager at the time.

16 Q. You would agree with me there was a body of  
17 information indicating that Aretha Bailey was allowed  
18 by Caroline Honse to come in on weekends unsupervised  
19 to catch up on work, right?

20 A. Correct.

21 Q. And I will get to Aretha Bailey momentarily.  
22 My understanding is that Caroline Honse allowed Aretha  
23 Bailey to do that because Aretha Bailey also missed a

1 lot of work, right?

2 A. Correct.

3 Q. She missed work for all kinds of personal  
4 reasons involving herself and her family, things like  
5 that?

6 A. Yes, correct.

7 Q. Lieutenant, would it be fair to say that  
8 multiple individuals working for and concerned about  
9 the integrity of the CSU lab complained to management  
10 about the fact that Aretha Bailey was in there on the  
11 weekend by herself?

12 A. Correct.

13 Q. Switch gears and ask you about Aretha Bailey.  
14 She is the person referred to in the  
15 preliminary report as the individual who is suspected  
16 of theft from a prior employer, but was given a job  
17 without much of a background check; is that fair?

18 A. Correct.

19 Q. Also, she was given a job as an administrative  
20 specialist but quickly moved into the FES position,  
21 which is Forensic Evidence Specialist, am I right about  
22 that?

23 A. Yes.

1 MR. COLLINS: I need to take a second, Your  
2 Honor.

3 THE COURT: Take your time.

4 (Discussion held off the record.)

5 BY MR. COLLINS:

6 Q. There is a -- I need to backtrack. There is  
7 an indication in the report on page 19, not that I am  
8 asking you to go to page 19, just making a record, that  
9 a more senior management position was added to oversee  
10 CSU FES operations and the manager who got the job  
11 demonstrated management deficiencies and that under the  
12 leadership of that manager, FES lacked operational  
13 policies and procedure. That is Caroline Honse, right?

14 A. Yes.

15 Q. I will ask you that from time to time because  
16 sometimes the report is not as specific and there is  
17 many times when I don't care who it is. Sometimes I  
18 will ask, if you know, you can let me know.

19 I will go back to the question I was asking  
20 you.

21 Again, for record purposes, page 18 of the  
22 preliminary DOJ report, it says, talks about  
23 casual/seasonal employee who within a week of joining

1 OCME was tasked with working on controlled substances.  
2 That is Aretha Bailey, right?

3 A. Yes.

4 Q. And she developed job responsibilities  
5 overtime, to the point where she was accepting and  
6 returning evidence, right?

7 A. Yes.

8 Q. She was transferring evidence from the locked  
9 vault to the chemist locations, right?

10 A. Yes.

11 Q. She was a person responsible, along with  
12 others, for assigning cases to particular chemists,  
13 right?

14 A. In Caroline Honse's absence, yes.

15 Q. Understand.

16 And she was primary, a primary, not  
17 necessarily the only liaison with the Department of  
18 Justice on actual criminal cases, right?

19 A. Yes.

20 Q. With respect to Aretha Bailey, your interviews  
21 consistently indicated she was terrible at her job,  
22 right?

23 A. Yes.

1 Q. All kinds of data entry errors, wrong evidence  
2 going to wrong chemists, all kinds of things, right?

3 A. Yes.

4 Q. And it is true, is it not, that employees  
5 indicated to you that part of the reason she was bad at  
6 her job was she was always talking on her phone; is  
7 that right?

8 A. Correct.

9 Q. Almost always talking on the phone included  
10 was consisted of personal calls involving various  
11 things from her kids' problems, to her sex life, to her  
12 boyfriends, to places she was moving, to things like  
13 that, right?

14 A. Yes.

15 Q. One of the things she was overheard saying on  
16 these calls -- let me try that again.

17 Among the topics she was heard saying on those  
18 calls, was that she had some financial difficulties,  
19 right?

20 A. Yes.

21 Q. She had trouble paying some utility bills,  
22 right?

23 A. I don't recall specifically what bills they

1 were, she had financial difficulty.

2 Q. She was trying to collect money, small  
3 amounts, but people owed her money, right?

4 A. Yes.

5 Q. Were you ever able to independently verify  
6 whether or not she did steal from her prior employer?

7 A. We conducted, I believe, three interviews with  
8 her prior employer, and they all suspected, and I  
9 believe one even said that she admitted to them that  
10 she had taken some items from there.

11 Q. I guess this would be a good time to ask;  
12 Aretha Bailey is no longer with OCME, correct?

13 A. Correct.

14 Q. It is my understanding from her interview with  
15 you, or someone, one of your people was that she now is  
16 taking care of her mom and lives down state, right?

17 A. Lives down state, correct.

18 Q. Moving on, evidence and Aretha Bailey. You  
19 gathered information in your investigation tending to  
20 indicate that Aretha Bailey had, like, special boxes of  
21 evidence that she would keep on a higher shelf, right?

22 A. We had one witness tell us that, correct.

23 Q. And you also learned from witness statements

1 she had certain Aretha boxes of evidence that she did  
2 not want anybody to go into, right?

3 A. Once witness statement, correct.

4 Q. I believe this also was only the one witness  
5 statement, might as well make a record, I believe it  
6 was Laura Nichols, if I am not mistaken?

7 A. Correct.

8 Q. Laura Nichols was a coworker of Aretha Bailey?

9 A. Yes.

10 Q. That to the effect of Laura Nichols would  
11 frantically be looking for an item of evidence, and  
12 coming up empty, then a minute later, Aretha Bailey  
13 would emerge with the evidence in hand; is that fair to  
14 say?

15 A. She would be able to find it quickly when no  
16 one else was able to find it, correct.

17 Q. And that happened on more than one occasion,  
18 right?

19 A. Yes.

20 Q. According to this one particular witness?

21 A. Yes.

22 Q. With regards to the information about Aretha  
23 Bailey, I think we should establish that that part we

1 just discussed about being able to find evidence  
2 somehow quickly and where others couldn't, that came  
3 from one employee, right?

4 A. Yes.

5 Q. Other things we have talked with respect to  
6 her work performance, personal habits, financial  
7 issues, that came from a multitude of employees?

8 A. Several different coworkers, yes.

9 Q. I want to ask about a guy named Mike Touchton,  
10 am I saying that right?

11 A. Yes.

12 Q. What is his job at OCME?

13 A. He is, I believe he is the facilities manager.  
14 He takes care of security around the building.

15 Q. Does he have access to -- let me try again.

16 Does he have the authority to change codes,  
17 give people access to rooms, hand out keys to people,  
18 things like that?

19 A. He does. After it is approved by Hal Brown.

20 Q. So whether someone were to get access to a  
21 particular portion of CSU is something that got  
22 escalated to Hal Brown?

23 A. It should be approved by Hal Brown. Once he

1 would approve it, he would then notify or e-mail Mike  
2 Touchton to provide that person with a key or access to  
3 that area.

4 Q. Do you see Mike Touchton as a functionary who  
5 just did what he was told?

6 A. Correct.

7 Q. When approved. Okay.

8 There are no arrests pending in this case,  
9 right?

10 A. Not as of now.

11 Q. In other words, you haven't sworn out warrants  
12 for anybody except for the two people that already got  
13 arrested?

14 A. Correct.

15 Q. I don't want you to give me specifics on this,  
16 I am just going to ask, are there currently suspects?

17 MR. GRUBB: Your Honor, I object to the  
18 relevance.

19 THE COURT: I will sustain the objection.

20 BY MR. COLLINS:

21 Q. Is the investigation ongoing?

22 A. Yes.

23 Q. I'm going to switch gears now, Lieutenant, and

1 ask you some questions based off of not witness  
2 statements, but, rather, the preliminary DOJ report?

3 MR. COLLINS: May I have a moment with  
4 counsel.

5 (Discussion held off the record.)

6 BY MR. COLLINS:

7 Q. I will represent to you that I just to make a  
8 record I believe this was issued around May 19, 2014.  
9 It is labeled preliminary report. Now, a couple quick  
10 questions about that -- June 19th. Correct that,  
11 June 19th.

12 You didn't write this report, right?

13 A. I did not.

14 Q. You contributed to the information based on  
15 your investigation, right?

16 A. Yes.

17 Q. So is it fair to say you are familiar with its  
18 contents?

19 A. Yes.

20 THE COURT: Lieutenant, if you need to see it  
21 in answering any questions, just let us know.

22 THE WITNESS: Okay.

23 BY MR. COLLINS:

1           Q. I want to ask you about the vault door being  
2 propped open, which has been a topic of some testimony.

3           There's been some testimony indicated it was  
4 very brief and just as convenient so someone could go  
5 in and out of there quickly without having to rescan to  
6 reenter. And then I think you would agree there's been  
7 some testimony it was routinely left open all the time,  
8 by left, I mean propped. Based on the investigation  
9 you conducted, what do have you to say about the vault  
10 door being propped open?

11          A. Yes, we had several witnesses explain to us  
12 that it had been -- some said it was routine, others  
13 wasn't that often, but that main vault door would be  
14 propped open, but it was explained that it was more for  
15 convenience when they were doing returns and taking  
16 drug evidence in and out. Every time they go in and  
17 out of the locker, they don't have to shut it, put the  
18 code in.

19          Q. I need to retrieve an exhibit, Your Honor.  
20           Provide a visual here. This is State's 20.  
21 You probably recognize that as the evidence room?

22          A. FES office.

23          Q. FES office, then to the rear left with the

1 coat hanging over it is the vault, right?

2 A. Correct.

3 Q. So there's been testimony about the door being  
4 propped open. You just answered the question about  
5 that. If you were to walk straight back, there is a  
6 door to the FES office which is also secured, right?

7 A. Yes, it really would be where the picture was  
8 taken from.

9 Q. The person standing in the door?

10 A. Correct.

11 Q. So did you learn from any witnesses at all  
12 that the door, vault was propped open, the FES door was  
13 open at the same time?

14 A. I don't believe we took any statements from  
15 witnesses saying both doors were propped open at the  
16 same time. I don't recall any statements that the  
17 outside hallway door in the FES office was propped  
18 open.

19 Q. I will represent to you that I believe it was  
20 Kelly Georgi who said that there was better ventilation  
21 if the doors were kept open, that it got hot in the  
22 exterior outside the FES office. Does that refresh any  
23 recollection for you?

1           A. I don't recall that, but I don't recall any  
2 statements where both doors were propped open at the  
3 same time.

4           Q. Where is the manager's office in relation to  
5 the FES office, is it right nearby?

6           A. Talking about the laboratory manager?

7           Q. Caroline Honse?

8           A. Same hallway, around the corner.

9           Q. So a manager, be it Caroline Honse or anybody  
10 else, would have an opportunity to observe what is  
11 going on in the FES office slash vault, right?

12          A. She certainly would have. Yes.

13          Q. I am going to depart from this report and ask  
14 you a question about the audit. Understanding your  
15 response that you weren't particularly involved in that  
16 part of the investigation; do you recall any training  
17 or kickoff meeting that took place in which the  
18 auditors were instructed on how to perform their  
19 auditing tasks?

20          A. I believe the audit started on February 24th,  
21 at Troop 2, and prior to starting, we had a large  
22 meeting with everybody in a conference room there at  
23 Troop 2, just to give everyone a little bit of

1 background of the investigation, what was occurring,  
2 and what we were looking for in the audit.

3 Q. And were specific policies or procedures  
4 discussed for how they would specifically perform their  
5 audit function, or was that left more to the discretion  
6 of the auditors and the supervisor?

7 A. We may have touched on it. I don't recall  
8 specifically what was said at that meeting, but the  
9 process would have been explained to them, you know,  
10 either at that meeting, or by one of the sergeants  
11 overseeing the audit.

12 Q. Going forward to page 27, at least my notes,  
13 from page 27. You don't have to look at anything in  
14 particular if you don't need to. There is a statement  
15 about a chemist having marijuana in their possession  
16 that was opened and resealed, and never tested. Some  
17 marijuana was missing. If you need the reference, it  
18 is page 27. You have it up there with you?

19 A. Yes, I do.

20 Q. Take a minute.

21 A. Where is that?

22 Q. My notes say page 27.

23 A. Okay.

1 Q. So some kind of way you ascertained, I don't  
2 need to know the details, that somehow this evidence  
3 got opened and then closed again, and resealed with  
4 tape, right?

5 A. Yes.

6 Q. That leads me to some questions about tape.  
7 Did you ever locate any sort of police agency evidence  
8 tape anywhere within OCME CSU?

9 A. No, not State Police evidence tape, no.

10 Q. Any police agency?

11 A. No.

12 Q. There is a fairly significant thread of  
13 witness testimony that -- when I say witness, I am  
14 talking about employees, that things got open  
15 sometimes, and they were re-taped, things like that.  
16 Would you agree that is a fair statement?

17 A. I think that happened occasionally.

18 Q. And is it your understanding that there was no  
19 opportunity for anyone to use any police tape in the  
20 sealing or resealing of any evidence packages?

21 A. Should have been using white Medical Examiner  
22 tape.

23 Q. Should be. Understood.

1           Did you come across, in your investigation,  
2 whether I have their statements or not, did you come  
3 across any instance where you developed a suspicion  
4 that someone was using some kind of police tape in  
5 order to improperly open and close evidence envelopes?

6           A. Yes.

7           MR. GRUBB: Same objection, relevance on this  
8 line of questioning.

9           MR. COLLINS: We have a lot of weight  
10 discrepancies in this case.

11           THE COURT: I will overrule that objection.

12 BY MR. COLLINS:

13           Q. I am not going any further. I wanted -- so  
14 the answer is yes, you have some suspicion that this  
15 did occur, right?

16           A. Yes.

17           MR. COLLINS: May I have a minute, Your Honor.

18           (Discussion held off the record.)

19           MR. COLLINS: No further questions. Thank  
20 you.

21                           CROSS EXAMINATION

22 BY MR. GRUBB:

23           Q. Good afternoon, Lieutenant.

1 A. Good afternoon.

2 Q. Your investigation, including the overall  
3 audit that was referenced, reveal a total of 51 pieces  
4 of evidence that you determined, you as State Police,  
5 determined were compromised stemming from a total of 46  
6 cases. I am referring to page 31 of the report that  
7 you testified about; is that accurate, sir?

8 A. It is. We just added another case recently.

9 Q. As of this writing?

10 A. Of the writing of this report, correct.

11 Q. Which would have been, I believe we came to  
12 the conclusion, June 19th?

13 A. Yes.

14 Q. Out of these 46 cases and 51 pieces of  
15 evidence, you initially started with over 9000 items  
16 and pieces of evidence; is that correct?

17 A. Correct.

18 Q. It would stand to reason that you're at  
19 approximately well over 8000 items that were not  
20 criminally compromised as determined by the Delaware  
21 State Police, right?

22 A. Of evidence that came from the Medical  
23 Examiner's Office.

1 Q. Sorry, I apologize. Yes.

2 A. Yes.

3 Q. Of those 46 cases, Dilip Nyala is not one of  
4 those 46 cases that you are aware of, is he?

5 A. He is not.

6 Q. Michael Irwin and his multiple cases is not  
7 any of these 46 cases, as far as you know?

8 A. He is not.

9 Q. How long have you been involved with drug  
10 police work?

11 A. For two years I was the direct supervisor of  
12 the Governor's Task Force, which is essentially a  
13 street-level drug unit. Then for the past  
14 year-and-a-half, I have supervised the Governor's Task  
15 Force and the New Castle County Drug Diversion Unit.

16 Q. It was referenced to you, or referenced in  
17 general, I guess, there are numerous weight  
18 discrepancies in the case. You heard that statement  
19 from defense counsel, right?

20 A. Yes.

21 Q. In your years of experience working with  
22 drugs, how many times, if you are able to tell us, how  
23 many times have drugs been weighed at the time of

1       arrest, submitted for analysis, wherever, talking OCME,  
2       NMS, Body, wherever it is going and come back at a  
3       lesser weight?

4             A.    Couldn't tell you how many times, it is  
5       extremely rare for that to happen.

6             Q.    It would be extremely rare for the weight at  
7       the time of arrest to identically match up to the  
8       weight at the time of testing?

9             A.    Correct.

10            MR. GRUBB:  No further questions.

11                               REDIRECT EXAMINATION

12       BY MR. COLLINS:

13            Q.    So the report, plus one, is up to, whatever,  
14       52 cases, I guess, that have been flagged as being  
15       problematic?

16            A.    Correct.

17            Q.    Going all the way back to case one, which was  
18       the Tyrone Walker case that started this whole thing;  
19       are you familiar with the facts of that case at all?

20            A.    Yes.

21            Q.    You would agree with me, right, that that  
22       testifying officer testified pretty clearly he didn't  
23       find any signs of tampering or anything with that

1 evidence envelope either, right?

2 A. No officer on the stand viewing that envelope  
3 would observe any type of tampering by the way it was  
4 concealed with Medical Examiner's tape.

5 Q. The tampering occurred, then it was taped over  
6 by Medical Examiner's tape?

7 A. Correct.

8 Q. At least in that case, right?

9 A. Yes.

10 Q. Now, with eight or nine thousand cases, versus  
11 56 cases, 8000 that you determined are not problematic,  
12 when I say you, I am using a large you, like you and  
13 everyone else involved, that comes primarily from your  
14 audit team, right?

15 A. Yes.

16 MR. COLLINS: Thank you.

17 RE CROSS EXAMINATION

18 BY MR. GRUBB:

19 Q. Lieutenant, you were asked about evidence  
20 tampering in the Walker case, correct?

21 A. Yes.

22 Q. As you correctly testified, the officer on the  
23 stand saw no evidence of tampering at the time he

1 testified in Kent County; is that right?

2 A. Correct.

3 Q. Was it later determined there was, in fact,  
4 evidence of tampering with respect to that evidence  
5 envelope in the Tyrone Walker case?

6 A. Yes.

7 MR. GRUBB: Thank you, no further questions.

8 THE COURT: Let's go back to the audit for a  
9 moment. On February 20th, you all went in and locked  
10 down the Medical Examiner's Office, and soon  
11 thereafter, retrieved evidence from there and the took  
12 it to Troop 2. A decision was made to audit the  
13 evidence you had seized.

14 You referenced a meeting in the beginning of  
15 the investigation to inform those who were going to be  
16 involved as to what is going to happen.

17 I know you have some difficulty remembering  
18 exactly what was done there. But before that meeting  
19 occurred, was there discussions among yourself and  
20 sergeants who are going to run it as to what criteria  
21 they would use to determine whether there was a  
22 discrepancy or not? How would they make that decision,  
23 and it appears that from testimony we have so far that

1       it was kind of left to the officer who was doing the  
2       audit as to whether or not he or she believed a  
3       discrepancy was sufficient, or significant.

4               THE WITNESS:   Right.

5               THE COURT:   Do you recall anything that was  
6       discussed about?

7               THE WITNESS:   Right, the way I explained it to  
8       the sergeants, I wanted every member of audit team, if  
9       they found a discrepancy, to bring it to the attention  
10      of the sergeant that was on duty.  If they thought it  
11      rose to level of a criminal compromise where there, you  
12      know, there was evidence that was packaged had been  
13      compromised or a significant quantity of drugs missing,  
14      that they would notify me immediately.  I would then  
15      take a closer look at the case and go from there.

16              THE COURT:   There wasn't any kind of direction  
17      given to them about, you know, if you have a ten  
18      percent reduction in weight, or you have five missing  
19      pills versus what is on the envelope, or something of  
20      that nature, there was no established --

21              THE WITNESS:   No numbers.  There was no  
22      percentage put in place.

23              THE COURT:   There was no protocol that could

1 be utilized so that everyone who was doing the audit  
2 would be doing it in the same fashion.

3 THE WITNESS: Right, I mean, evidence that we  
4 looked at ranged from, I mean, there was numerous  
5 pieces of evidence that contained a blunt of marijuana  
6 to thousands of bags of heroin, kilos of cocaine. It  
7 was very clear to us when we started finding  
8 compromised packages that the evidence, envelopes, bags  
9 that were cut and compromised, there was a large  
10 quantities of drugs missing. We were not finding any  
11 envelopes compromised or cut that were then only  
12 missing a gram or two of marijuana, for example.

13 So we kind of left it to the discretion of  
14 sergeants because I think I testified to earlier, it is  
15 very rare that marijuana, package of marijuana evidence  
16 is going to weigh the same as what the original  
17 investigating officer weighed it at, what the Medical  
18 Examiner weighed it at, and what we are weighing it at  
19 now for a third time.

20 So use best discretion. If there were,  
21 obviously, any signs of tampering they would notify me  
22 immediately.

23 THE COURT: Thank you.

1 MR. COLLINS: That does not prompt anything.

2 RECROSS EXAMINATION

3 BY MR. GRUBB:

4 Q. If I could, you testified there were no  
5 specific rigid criteria given to the team members with  
6 respect to a number discrepancy, or percentage, or  
7 anything like that?

8 A. Correct.

9 Q. Were instructions given to the audit team as  
10 to what to look for in determining whether or not they  
11 circled yes on the discrepancy form?

12 A. They would have been looking -- first thing  
13 they would have been looking at is the description on  
14 the evidence envelope, or the package to what the  
15 package should contain, according to the investigating  
16 officer. Once they cut it open, they would then, for  
17 heroin, for example, 100 bags, they would count the  
18 bags. If it was a marijuana blunt, weighed half a  
19 gram, going to look to see if it's a marijuana blunt.

20 So depending on the drug, if it's pills, they  
21 would do a pill count, confirm the count on the pills.  
22 Then they would use a pill identifier to confirm it is  
23 the pills that are stated on the envelope.

1 Q. Would it be fair to say instruction was given  
2 on what to do when inspecting the evidence envelopes?

3 A. Yes.

4 Q. Would it be fair to say that instruction was  
5 given on what red flags to look for in inspecting the  
6 envelopes and contents?

7 A. Yes.

8 Q. And then, lastly, would it be fair to say that  
9 what was not given was a firm-line rule of if this many  
10 grams of fill in the blank drug are missing, you should  
11 jot it down. That was the deferential part that you  
12 testified to with regard to the sergeants; is that  
13 accurate?

14 A. Correct. Like you said for marijuana, for  
15 example, it is going to be extremely rare that what  
16 they are weighing there is going to be the same weight  
17 that the investigating officer and the chemist weighed  
18 it at the Medical Examiner's Office. So we know a  
19 ten-gram package of marijuana might only weigh 9.6  
20 grams now. We expect that. It didn't rise to a level  
21 of a criminal compromise. There was no tampering with  
22 the evidence.

23 The example of marijuana, marijuana is going

1 to dry out a little bit over time, also. So you are  
2 going to have that weight discrepancy right off the  
3 bat.

4 Q. Would you expect a weight discrepancy in  
5 heroin, as well?

6 A. There could be, because with heroin we were --  
7 agencies across the state were estimating .025 grams a  
8 bag, which we have since reduced because they have been  
9 finding the bags are weighing a little less than that  
10 now.

11 Q. At the time of a heroin seizure, the weight is  
12 an estimation; is that accurate?

13 A. Correct. You are multiplying .025 times the  
14 number of bags.

15 MR. GRUBB: Thank you. No further questions.

16 REDIRECT EXAMINATION

17 BY MR. COLLINS:

18 Q. When did that changeover happen, change in  
19 estimation of --

20 A. It was this year. I can't recall the --

21 Q. 2014?

22 A. Yes.

23 Q. Jumping back to two times ago when Mr. Grubb

1 was asking you questions. The alteration of the  
2 evidence envelope in the Tyrone Walker case that  
3 permitted the evidence to be swapped out, was  
4 thereafter covered over with Medical Examiner's tape,  
5 right?

6 A. Correct.

7 Q. Did your audit team peel pack any Medical  
8 Examiner's tape in this case when conducting the audits  
9 to see if there were any cuts or alterations to the  
10 envelopes?

11 MR. GRUBB: Objection to relevance, Your  
12 Honor. The two cases before the Court have no Medical  
13 Examiner's tape on them.

14 THE COURT: I will overrule the objection.  
15 There is no tape here, you can answer the question.

16 THE WITNESS: I can't say for sure.

17 MR. COLLINS: Thank you.

18 THE COURT: Thank you. You can step down. We  
19 okay for 10 o'clock? Stand in recess until 10 o'clock.

20 (Whereupon the proceedings were adjourned.)  
21  
22  
23

CERTIFICATE OF COURT REPORTER

I, John P. Donnelly, RPR, Chief Court Reporter of the Superior Court, State of Delaware, do hereby certify that the foregoing is an accurate transcript of the proceedings had, as reported by me, in the Superior Court of the State of Delaware, in and for New Castle County, in the case herein stated, as the same remains of record in the Office of the Prothonotary at Wilmington, Delaware. This certification shall be considered null and void if this transcript is disassembled in any manner by any party without authorization of the signatory below.

WITNESS my hand this 30th day of JULY,  
2014.

Cert. # 161-PS

\_\_\_\_\_  
/s/ John P. Donnelly, RPR  
Chief Court Reporter